

**THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

A DISSERTATION

*Submitted to the Board of University Studies of the
Johns Hopkins University in Conformity with
the Requirements for the Degree of
Doctor of Philosophy*

1932

**By
HENRY G. BURKE**

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EDITORIAL FOREWORD

In coöperation with the Judicial Councils of Maryland and Ohio, the Institute of Law of The Johns Hopkins University is making state-wide studies in the administration of justice in the two states. In announcing the initiation of the studies the following statement of objectives was made:

1. To study the trends of litigation and to ascertain its human causes and effect.

2. To study the machinery and the functioning of the various agencies and offices which directly and indirectly have to do with the administration of law.

3. To learn reasons for delays, expense, and uncertainty in litigation.

4. To institute a permanent system of judicial records and statistics which will automatically provide information now secured after great labor.

5. To detect points at which changes in substantive law would contribute markedly to social justice.

The study in Ohio was begun in January 1930; that in Maryland the following July. The present volume is one of a series of reports of the results of the Maryland study. The fundamental assumptions underlying all the work of the Institute, and so of the present study, are that in order to deal intelligently with a situation it is necessary to know the facts which make it what it is, and that the only way to attain to this knowledge is by observation of the events of which the situation is composed.

In a field such as that of Public Utilities Regulation one thing which is obviously needed as a basis for useful discussion of the possibilities for improvement is a comprehensive and, so far as possible, objective and unbiased account of the activities of some of our commissions. The present study attempts to give a portion of such an account in so far as it can be obtained from the records of the Maryland Commission.

A study of similar scope is under way in Ohio. The present account of the operation of the Maryland Commission is far from complete, owing to lack of funds for a more comprehensive study of the data obtained. It is hoped to supplement it later if funds become available.

CARROLL T. BOND

W. W. COOK

*Directors of the Study of the
Judicial System of Maryland*

P R E F A C E

This study was prepared as a dissertation in the Political Science Department of the Johns Hopkins University, and also as a part of the study of judicial administration in Maryland, by the Institute of Law. It was not designed to enter the field of controversial writings and theories concerning public utilities. For that reason, it was undertaken in the spirit of the pursuit of fact and detail, and has been so presented. It is intended as an analysis of some of the significant workings of the Public Service Commission of Maryland in its regulatory and administrative activities. The facts herein contained may, however, furnish some material for the broader controversial issues.

The purpose of this study is to deal with an important branch of administrative law in operation. In order to do this, the Public Service Commission of Maryland has been selected as the subject of a case study. Although it was chosen principally on the grounds of convenience, the Maryland Public Service Commission, nevertheless, represents a fairly usual type of commission, both as to the fundamental concepts motivating its foundation and the general legal provisions governing its actions. The Commission operates under a law which dates back to 1910 and which is similar to laws prevailing in most of the states. Less than half of the present commissions had been established at that time, but most of the states did have some sort of railroad, or utility commission. These older regulatory bodies were, however, mostly of the so-called weak type, from which the later, or strong, type of commission was a decided departure.

This study is designed principally to illustrate the workings of law in its practical manifestations. On the one hand, there is that which may be called the organic law: the original statute, amendments to it, and the decisions of the Maryland Court of Appeals with regard to relevant matters submitted for its determination. On the other hand, there is a governmental unit, which carries on a vast variety of activities and which purports to derive the authority for its existence, and for all of its activities from this organic law. The particular problem involved, therefore, is the analysis of the law which forms the basis for this study and, also, the correlation of the law with the organism built upon it.

The material provided by the Public Service Commission of Maryland is by no means exhausted in this study. Many of the subjects merely mentioned, or slightly developed here, are susceptible of elaboration into independent studies equal to, or greater than, the size of the present one. Such phases of the Commission's activities as the administration of security issues, the regulation of accounting records, and the requiring of new services or equipment could all be profitably used as the basis for further research.

To Professor W. W. Willoughby, for his suggestion of the topic of the study, and for his coöperation and help in reading the manuscript, I present my acknowledgments. For the ready help and financial assistance in the preparation of statistical material and publication, I wish to thank the Institute of Law of the Johns Hopkins University. Dr. L. C. Marshall and Dr. W. W. Cook, of the Institute, have shown me many courtesies in addition to their sympathetic aid.

I am deeply indebted to the Public Service Commission, and especially to its Secretary, Mr. Frank Harper, for valuable assistance and interest, and for his courteous treatment in allowing me complete access to the records and documents of the Commission. To Mr. Harold E. West, Mr. J. Frank Harper, Mr. Steuart Purcell, and Mr. William Cabell Bruce, I am indebted for conferences and suggestions. Dr. Horace E. Flack, of the Bureau of Legislative Reference, and his assistants, have been kind in allowing me access to documents in their possession. Mr. Sidney S. Leichter has given me great assistance in the collection and preparation of statistical data. Mr. Francis J. Carey, of the Baltimore bar, has very kindly read the manuscript in a preliminary stage.

Special acknowledgment is due to my wife for her constant aid.

HENRY G. BURKE

JOHNS HOPKINS UNIVERSITY

March 28, 1932.

CONTENTS

	PAGE
EDITORIAL FOREWORD	vii
PREFACE	ix
CHAPTER	
I. THE PASSAGE OF THE PUBLIC SERVICE COMMISSION LAW	1
II. THE PUBLIC SERVICE COMMISSION LAW OF MARY- LAND	13
III. PROPOSED AMENDMENTS TO THE LAW WHICH HAVE FAILED OF ENACTMENT.....	49
IV. THE MARYLAND COMMISSION.....	59
V. THE DOCKETS OF THE COMMISSION.....	71
VI. THE COMMISSION AND THE COURTS.....	115
VII. VALUATION AND RATE CASES.....	131
VIII. CONCLUSIONS	159
APPENDIX: THE UNITED RAILWAYS & ELECTRIC COMPANY	165
TABLE OF CASES.....	171
INDEX	173

CHAPTER I

THE PASSAGE OF THE PUBLIC SERVICE COMMISSION LAW

A superficial examination, in the journals of the State Senate and the House of Delegates of 1910 of the references to the bill which was later to become the Public Service Commission Law of Maryland, would seem to indicate that the bill was not actively opposed nor a matter of much public concern. These journals give only slight hints of a controversy which raged behind the legislative scenes, and of a brilliant and bitter parliamentary attack which almost wrecked the bill. Much of the story of this battle, including an incident which was described as one of the most sensational in the history of Maryland politics, must be gathered largely from the newspapers of that day. Even with these details assembled, only the external evidence of the struggle is presented and very little about the personalities and forces which were directing it. Every known legislative device was employed to wreck the bill. Amendments intended to destroy the efficacy of the bill were offered in committee rooms and on the floors of the Senate and the House of Delegates. Conflicting bills were introduced in both Houses of the General Assembly. Who was conducting the fight against the bill? The legislative line-up is not helpful, for in the final count, all but a few joined in the affirmative vote on the bill. A street railway company published full page advertisements explaining its opposition to the bill, and there are references to a "gas lobby," (the Consolidated Gas, Electric Light and Power Company) in the newspapers. But, all in all, the identity of the real opponents of the bill was never made manifest.

The first blow in the battle for a utility commission had been struck in the General Assembly of 1908, when a bill sponsored by the Reform League was introduced in the House of Delegates. This bill purported to organize a Department of Public Utilities for the City of Baltimore. The department proposed was to have fairly broad powers in respect of rates, services, franchises, and security issues, and its jurisdiction was to extend to railroads and street railways, common carriers, gas,

electric, refrigerating, heating, and telephone companies.¹ The bill died a speedy death that year, but it was introduced again, in 1910, at the time when the contest was raging over the enactment of the present law.

From the time of the introduction of the first bill in 1908, the newspapers reflected a deep and continuing interest in the enactment of a public service commission law. On June 3, 1909 Governor Crothers issued a call for a "cabinet" meeting for June 17, to discuss a public utilities commission.² It was not until August, however, that the work of preparing the bill was definitely committed to the Attorney-General, Isaac Lobe Straus.³ At the same time that this assignment was committed the governor's "cabinet" pronounced itself unanimously in favor of a public utilities commission.⁴ Close on the heels of this action by the governor's "cabinet" came the platform of the Democratic and Republican State Conventions, both of which favored the regulation of public utilities, in reasonably definite terms.^{4a}

Running parallel with these political actions and far more potent in concentrating interest on the problem of public utility regulation, was the proposal of the Consolidated Gas, Electric Light and Power Company of Baltimore in regard to the introduction of natural gas into Baltimore. It would be straying too far afield to trace in detail the history of the contest which this proposal aroused, but the natural gas incident throws much light on the state of mind of the officers of at least one utility, and may therefore not be overlooked.

On May 11, 1909, the gas company came forward with an elaborate plan for furnishing natural gas to Baltimore. As originally proposed, the plan permitted the mayor and city council to name five of the eighteen directors of the Consolidated Gas, Electric Light and Power Company, it gave to the

¹ *House of Delegates*, No. 159, introduced Feb. 7, 1908.

² *The Sun*, Baltimore, Jun. 3, 1909.

³ *Ibid.*, Aug. 6, 1909; *Baltimore News*, Aug. 6, 1909.

⁴ *The Sun*, Baltimore, Aug. 7, 1909.

^{4a} *Ibid.*, Aug. 12, 1909, the section of the Democratic platform on the law reads as follows: "We favor the creation by appropriate legislation of a public utilities commission applicable to all public-service corporations." *Ibid.*, Aug. 26, 1909, the section of the Republican platform on the commission reads as follows: "We advocate a just, impartial and unprejudiced control of public service corporations and public utilities generally in this state through incorruptible, enlightened and non-partisan agencies, and we condemn any exemption from such supervision and control, and any other special favors to any particular enterprise or corporation."

city 40% of any profits which might be earned after the payment of a 4% dividend on \$6,300,000 of common stock, and asked for perpetual exemption from the supervision of a public service commission.⁵ One newspaper pointed out immediately that this request for exemption from the regulation of a commission furnished a cogent reason for the refusal of such exemption, and for the creation of a commission.⁶ In later drafts of the proposal many of the original conditions of the gas company's proposition were abandoned or modified. The share of the city in surplus earnings was raised from 40% to 50%, and a 20 year contract was asked for, in place of perpetual exemption from regulation. The idea of municipal representation was discarded.⁷ Nevertheless, it was obvious that the question of regulation would cease to be important to the gas company if it were to obtain a contract for 20 years. Yet, while the newspapers were fulminating against the proposal, the gas company was piling up signatures on cards which favored the introduction of natural gas into Baltimore "as proposed." But this great array of advocates of the plan did not satisfy the opponents of the proposal. They objected to the irrevocable contract or, even, to a twenty year contract, on which the gas company insisted, and to provisions in the proposal, which also fixed electric rates. They reasoned that if the purpose of the proposal were to furnish Baltimore an opportunity to obtain gas at lower rates, the gas company would not be entitled on that account to obtain protection for its electric rates. Such a proposal would obviously deprive any regulatory body which might come into existence of a broad share of its jurisdiction. If such an agreement could validly be made, it would open the door to numbers of such agreements, which could completely rob the commission of its powers.⁸

The proposal found its way finally to the Board of Estimates of Baltimore City which refused to recommend more than a five year contract, and insisted on retaining the power to revise gas and electric rates at the expiration of this period. This counter proposal of the Board of Estimates was rejected by the gas company, which maintained the necessity of its

⁵ *Baltimore News*, May 11, 1909.

⁶ *Id.*

⁷ *The Sun*, Baltimore, Jun. 27, 1909.

⁸ *Ibid.*, Sept. 24, 1909

twenty year contract.⁹ The entire proposal fell through, although negotiations were continued into 1910.

In retaliation against the gas company for its action, the City introduced bills in the General Assembly of 1910 for the repeal of the provisions in the Baltimore City Charter and the public local laws which gave the gas company monopoly privileges in Baltimore.¹⁰ The battle over the "monopoly repealer," as the bills dealing with the repeal were called, competed with the public service commission bill for public attention. The accusation was frequently made that the utility was deliberately concentrating interest on the "monopoly repealer" as a blind to divert attention from the importance of the public service commission bill.¹¹

While the excitement was still raging around the natural gas proposal, the public utility bill was completed, and summaries of it appeared in the newspapers during December.¹² This bill, which was modelled principally on the New York and Wisconsin statutes, became known as the "Straus Bill" to distinguish it from the other proposals for commissions. It received its name from its author and chief defender, Isaac Lobe Straus.

No sooner did the content of the bill appear, than it became the object of comment, both favorable and unfavorable. A great deal of attention was at first directed to the provision in the bill which permitted an appeal from the orders of the commission¹³ to the *nisi prius* courts of the State and thence to the Court of Appeals.¹⁴ This preliminary skirmish was due to the Attorney-General's choice of following the Wisconsin, rather than the New York, statute in a provision permitting actions to be instituted in the courts of the State to set aside, modify, or vacate any order of the Commission.¹⁵ The Attorney-General

⁹ *Ibid.*, Dec. 29, 1909.

¹⁰ *Ibid.*, Feb. 13, 1910.

¹¹ *Baltimore News*, Mar. 10, 1910.

¹² *The Sun*, Baltimore, Dec. 11, 1909; *Ibid.*, Dec. 26, 1909.

¹³ *Baltimore News*, Dec. 16, 1909.

¹⁴ *House of Delegates*, No. 96, Section 11, 1910.

¹⁵ The parallel section of the New York Law (*Birdseye's Cumming and Gilbert's Consolidated Laws of New York, Annotated* p. 4658) on the service and effect of orders (*Laws*, 1907, Ch. 429, Sec. 23) says nothing about appeals or actions to vacate or set aside orders. The New York statutes were subsequently changed, and recognized the power of the courts to modify or suspend an order of the commission in 1914. (*Laws*, 1914, Ch. 240). The "Straus Bill" followed the precedent of the Wisconsin statute which allowed an appeal (*Laws*, 1907, Ch. 499).

promptly pointed out that this right of appeal was not a privilege granted to the public service corporations, but merely a statement of their constitutional right. This clause, he contended, would, also, save needless delays in litigation.¹⁶ Subsequent discussions of this point never acquired serious proportions.

On January 5, 1910 the General Assembly met, with both parties committed to the passage of a public service commission law.¹⁷ The complexion of both the Senate and the House of Delegates was preponderantly Democratic.¹⁸ The Senate organized with Arthur P. Gorman¹⁹ as president, and, in his address of acceptance, he strongly advocated a regulatory law for public utilities.²⁰ The Governor in his address also reiterated his promise to redeem the party's pledge and establish a Public Service Commission.²¹ The Governor and his "cabinet" had possessed ample opportunity to study the problem of utility regulation, and two days before the meeting of the legislature had approved a tentative draft of the "Straus Bill."²²

Although the question of whether one, or even two, of the members of the Commission should necessarily be residents of Baltimore, was given much publicity, the matter was dropped by the time the bill was submitted to the General Assembly.²³ This discussion was particularly pertinent, inasmuch as a large part of the salaries of the Commissioners and of the General Counsel were originally to be paid by the City of Baltimore.²⁴

¹⁶ *The Sun*, Baltimore, Dec. 31, 1909; *Baltimore News*, Jan. 3, 1910.

¹⁷ See above, note 4a, the platforms of the two parties.

¹⁸ Frank Richardson Kent, *The Story of Maryland Politics*, pp. 388-390. In the Senate there were 21 Democrats and 6 Republicans and in the House of Delegates 91 Democrats and 37 Republicans.

¹⁹ *Md. Senate Journal*, 1910, Jan. 5, 1910, p. 5.

²⁰ *Ibid.*, p. 7. Gorman's speech on this occasion is particularly interesting in view of the very dubious part which he played in the politics surrounding the "Straus Bill." On this occasion, he said, "I wish especially to call attention to the necessity of enacting a Public Utilities Commission, which will be applicable to all of the Public Service Corporations of this state, an act that will accomplish the results desired by such a commission and a measure that will be fair and just to the large corporate interests of the state, and at the same time will be an assurance to the people that their interests will be protected."

²¹ *Ibid.*, p. 24.

²² *Baltimore News*, Jan. 3, 1910.

²³ *Id.*; *The Sun*, Baltimore, Jan. 5, 1910.

²⁴ *House of Delegates*, No. 96, Sec. 2, 1910.

After what may seem undue delay, the "Straus Bill," now No. 96 on the House of Delegates calendar, was introduced on January 28, 1910.²⁵ On that date, it was marked, "Introduced, read first time and referred to the Committee on Judiciary." There had been considerable fear expressed that the bill would "have its teeth drawn,"²⁶ and that the legislators were getting "cold feet" over their campaign promises,²⁷ but when the bill was brought forth, it emerged in its full vigor. In fact it was so vigorous as to be considered drastic and unfeasible.²⁸ The "Straus Bill" remained with the Judiciary Committee for a long time and was not reported out until March 9.²⁹

About a week before House Bill No. 96 was reported out by the Judiciary Committee, it was apparent that the decision of the Committee would be favorable, although a minority report might accompany the decision.³⁰ It was also feared, or anticipated, at that time, that the attempt would be made to kill the effectiveness of the bill by a series of amendments.³¹ Failing in this device, the opponents of the bill were expected to introduce competing bills so as utterly to confuse the issues involved, distract or divide the supporters of the bill, and thus make its passage impossible.³²

During the days immediately preceding the introduction of the "Straus Bill" and during the weeks that it remained with the Judiciary Committee, the arguments against the bill were taking form. It was contended, first of all, that there was no sentiment in Maryland for the establishment of a Public Service Commission.³³ In addition, the annual appropriation of \$75,000 provided for in the bill was largely played up, together with the threat that in actual practice the cost would be con-

²⁵ *Journal House of Delegates*, 1910, p. 134.

²⁶ *Baltimore News*, Jan. 25, 1910.

²⁷ *Ibid.*, Jan. 26, 1910.

²⁸ *Baltimore American*, Feb. 7, 1910; *Baltimore News*, Feb. 16, 1910; *Baltimore American*, Mar. 2, 1910.

²⁹ *Journal House of Delegates*, 1910, p. 592.

³⁰ *Baltimore American*, Mar. 3, 1910.

³¹ *Baltimore News*, Mar. 4, 1910.

³² *Ibid.*, Mar. 5, 1910.

³³ *Baltimore American*, Jan. 22, 1910. Much force was, no doubt, added to this argument by the failure of any response to public hearings called on the bill. *Baltimore News*, Dec. 30, 1909.

siderably more.³⁴ The spectre of unconstitutionability was duly paraded, for there were those who regarded legislative regulation as the only proper method.³⁵ What was probably intended as an appeal to local pride was made, when it was alleged that the bill was only a copy of laws in force in other states and that it had no application to local conditions.³⁶ Some felt that there was no need for a commission and that one might be appointed as problems which demanded attention arose.³⁷ As a final argument, caution was urged. No action whatever should be taken until the entire situation had been thoroughly studied and proper recommendations made by a committee appointed to make this survey.³⁸

Only two days before the report of the Judiciary Committee on the "Straus Bill," a competing bill was introduced in the House of Delegates.³⁹ This was the first overt act by the opponents of the bill. Mr. Pairo, who introduced the bill, and gave his name to it, was conspicuous in his opposition to the "Straus Bill" throughout the session. The "Pairo Bill" provided for an elective Board of three members, with four year terms. An interesting device was introduced for maintaining at least one member of the minority party on the commission by permitting the electorate to vote for only two members. Salaries of the Commissioners were to be three thousand dollars (\$3,000) per annum, whereas the "Straus Bill" allowed five thousand, four hundred dollars (\$5,400) for the chairman and four thousand, five hundred dollars (\$4,500) for the other two Commissioners. A chief clerk and counsel, each at an annual salary of two thousand, five hundred dollars (\$2,500) were to be selected by the Board. The powers were very vaguely stated, and absurd penalties ranging up to one hundred thousand dollars (\$100,000) for violation of the orders of the Board were pro-

³⁴ *Baltimore American*, Jan. 22, 1910, *Ibid.*, Feb. 10, 1910, *Ibid.*, Mar. 2, 1910. The contentions were made that the best Commission was the one which would serve for the least money, and that to employ high priced Commissioners would tend to make the positions political, and that the whole move was simply inspired by the desire of the administration to provide itself with a horde of expensive jobholders.

³⁵ *Baltimore News*, Mar. 4, 1910.

³⁶ *Id.*; *Baltimore American*, Jan. 22, 1910 and Mar. 9, 1910.

³⁷ *Ibid.*, Mar. 2, 1910. This suggestion may have been intended to pave the ground for the "Pairo Bill" which was introduced into the House of Delegates on Mar. 7, 1910, and which provided for a board in the nature of an arbitration tribunal.

³⁸ *Baltimore News*, Mar. 4, 1910.

³⁹ *House of Delegates*, No. 559, 1910.

vided for. The bill could never have been seriously intended as a proposed law. It, too, was referred to the Judiciary Committee.

The second attack upon the "Straus Bill" occurred when it emerged from the Judiciary Committee on March 9.⁴⁰ One member had submitted a minority report without comment, and the chairman of the committee apparently intended that the bill be made the special order of business for the next day.⁴¹ Not content with the delays which the bill had suffered in the Judiciary Committee, its opponents, however, were determined to kill it by transferring it to the Ways and Means Committee.⁴² The implications of this reference to the Ways and Means Committee are clearer when one remembers that Carville D. Benson, the chairman, had been conspicuous in fighting the battle of the gas company against the repeal of its monopoly. Although he had declared himself to be in favor of a public utilities bill, he had refrained from committing himself on the "Straus Bill."⁴³ His relation to the gas company in the "monopoly repealer" bills, his subsequent attacks on the "Straus Bill," and his well known reputation as a dangerous opponent with parliamentary skill in side-tracking bills,⁴⁴ thus gave color to the impression that the transfer to the Ways and Means Committee was a move to kill the bill.

Before the "Straus Bill" was finally reported out by the Ways and Means Committee, two more bills relating to public utility commissions were introduced. The Reform League Bill which had been sponsored in the 1908 session was introduced this year in both the House of Delegates and the State Senate.⁴⁵ In the Senate, the Bill was referred to the Finance Committee and no more heard of it; in the House of Delegates the bill was referred to the Ways and Means Committee. It was reported out without recommendation on March 29, 1910 (the same day on which the "Straus Bill" was reported out) and consideration of it was indefinitely postponed by a vote of 64 to 31.⁴⁶

⁴⁰ *Journal House of Delegates*, 1910, p. 592.

⁴¹ *Baltimore News*, Mar. 9, 1910.

⁴² *Journal House of Delegates*, 1910, p. 592.

⁴³ *Baltimore News*, Mar. 11, 1910.

⁴⁴ Frank Richardson Kent, *op. cit.*, p. 392.

⁴⁵ *Md. Senate Journal*, 1910, p. 873; *Senate of Md.*, No. 469, 1910; *Journal House of Delegates*, 1910, p. 662; *House of Delegates*, No. 646, 1910.

⁴⁶ *Journal House of Delegates*, 1910, pp. 1450-1451. These Reform League Bills, as stated above related only to the City of Baltimore.

Although the Reform League Bills helped to confuse the situation by distracting attention from the "Straus Bill," they at no time constituted a serious threat, and were practically unnoticed by the newspapers.

The supporters of the "Straus Bill" felt that the greatest danger to it lay, not in the bills which have already been described, but in a utility bill, which President Gorman promised to prepare.⁴⁷ Two days before the "Gorman Bill" was introduced it was described as an "undersized child" without teeth.⁴⁸ The bill as it appeared on March 22, 1910 bore out this description.⁴⁹ Fear for the "Straus Bill" was felt, not because of the merit which the "Gorman Bill" possessed, but because of the powerful political position of Gorman, and because of the failure of the Governor to make a strong stand denouncing the bill.⁵⁰ The "Gorman Bill" was referred to the Senate Committee on Finance.

If there were any doubt about the Governor's position at this time, his views were clarified within a few days. The Ways and Means Committee in the House of Delegates under the chairmanship of Benson had persistently refused to report out the "Straus Bill." Then the Governor stated that he would veto every local measure if the public utilities bill were to fail of passage, and Benson announced that he "threw up the sponge" and would report the bill out on the very next day.⁵¹

The next day, March 29, 1910, all three House Bills, the "Straus Bill," the "Pairo Bill," and the "Reform League Bill" were reported by the Ways and Means Committee. The "Pairo

⁴⁷ *Baltimore News*, Mar. 15, 1910.

⁴⁸ *Ibid.*, Mar. 20, 1910.

⁴⁹ *Md. Senate Journal*, 1910, p. 972. The bill was only four pages long and had obviously been composed in haste. The commission proposed in the bill belonged to what is known as the "weak type." It had authority to inquire into the affairs of public service corporations, and on the basis of these investigations to make recommendations to the Governor and the General Assembly, and to prepare bills for the General Assembly. The orders of the Commission were without compelling force. The bill allowed only \$15,000 for expenses of the Commission after appropriation had been made for the salaries of the Commissioners and their attorney. *Senate of Md.*, No. 475, 1910.

⁵⁰ *Baltimore News*, Mar. 23, 1910.

⁵¹ *Ibid.*, Mar. 28, 1910. The report on the bill would probably have been forced in any event, if the Committee had failed to report it voluntarily. *The Sun*, Baltimore, Mar. 29, 1910.

Bill" and the "Reform League Bill" emerged without recommendations. Further action on these bills was indefinitely postponed.⁵²

Although the days remaining for the General Assembly were few, the most stormy contests were still in the future for the "Straus Bill." The two committees, through which it had passed, offered their reports with over seventy amendments to the bill. These were concerned principally with correcting errors and filling in omissions in the original draft.⁵³ The only substantial amendments concerned the salaries of the Commissioners and the General Counsel, and a provision inserted in section 30, that valuations fixed by the Commission were to be made, so far as possible, so as not to disturb the value of bonds issued prior to the passage of the act.⁵⁴ These amendments were all passed. An attempt was promptly made to extend protection to "stocks and other securities" as well as to bonds, but this amendment was rejected.⁵⁵ A series of sixteen long amendments was then offered from the floor, in an obvious attempt to neutralize, or destroy, the efficacy of the bill,⁵⁶ but these all failed of passage. Benson then tried to save the day for the opponents of the bill by proposing that section 30 of the bill, which gave the Commission the power to fix values on the properties of public service corporations, be entirely stricken out. This attempt also failed. The bill was ordered engrossed for a third reading.⁵⁷ The following day the bill was read for the third time, passed by 95 yeas to 3 nays and sent to the Senate.⁵⁸

When the bill was received by the Senate, the 1910 session was rapidly drawing to a close. It was essential that the law be passed in the form in which it had been received from the House, for any amendments would require the concurrence of

⁵² *Journal House of Delegates*, 1910, pp. 1449-1451.

⁵³ *Ibid.*, pp. 1457-1462.

⁵⁴ *Ibid.*, pp. 1467-1468.

⁵⁵ *Ibid.*, p. 1468. The protection of all security values would virtually have negated the entire efficacy of the law.

⁵⁶ *Ibid.*, pp. 1469-1475. These amendments proposed to reduce substantially the salaries of the Commissioners and of the General Counsel, to strike out the contribution which Baltimore City was required to make to the salaries of the Commissioners and the General Counsel, to restrict materially the regulatory and investigating powers of the Commission, and to limit the rate making power by requiring that no rates be fixed so as to prevent the utilities from earning interest on their bonds.

⁵⁷ *Ibid.*, p. 1475.

⁵⁸ *Ibid.*, p. 1632.

the House, and this delay would probably mean the death of the bill. The bill was read in the Senate on Thursday, March 31, and referred to the Finance Committee.⁵⁹ Only Friday, Saturday, and Monday remained of the session.

On Friday afternoon, the Finance Committee of the Senate went into session on the bill and emerged six hours later with a notable body of amendments. This was the first in a series of dramatic events which marked the brief course of the bill through the Senate. When the Attorney-General heard of the amendments, he insisted on seeing them. He found that an attempt was being made to emasculate the bill, and insisted that the amendments be rejected.⁶⁰ In this position he received the active support of the Governor.⁶¹

The next day, Saturday, Mr. Price, the chairman of the Finance Committee reported the bill favorably with amendments. By order of the President it was laid over under the rules.⁶² All through the day one bill after another had been offered by the President but the utilities bill did not make its appearance. The members, waiting to fulfil their party pledge, were prepared to remain until dawn to dispose of the public service commission bill. At nearly three o'clock in the morning, however, Senator Biddison arose and moved that the Senate adjourn until ten o'clock Monday morning. This sudden move was all the more irritating to the supporters of the "Straus Bill" because it appeared that Senator Brady had risen to ask for a consideration of the utilities bill at that very time, but had been disregarded by the chair in favor of Biddison. The Chairman put the motion to adjourn, and, although, it was alleged that the "nays" exceeded the "yeas," he declared the motion carried and announced the Senate adjourned until Monday. As the President began to leave the chair, cries for a roll

⁵⁹ *Md. Senate Journal*, 1910, p. 1577.

⁶⁰ *Baltimore News*, Apr. 3, 1910; *The Sun*, Baltimore, Apr. 3, 1910. These amendments, which do not appear in the Journal of the Senate, were assuredly aimed at the heart of the bill. They would destroy the rate making power of the Commission, deprive it of jurisdiction with regard to security issues, prohibit the authorization of the exercise of franchises which would permit competition with existing public utilities, attempt to give legislative sanction to values based on outstanding securities, and make the news service agencies public utilities. At this time the rumor prevailed that lobbyists for the Consolidated Gas, Electric Light and Power Company of Baltimore had been closeted with the Committee and that these amendments had been framed by counsel for the gas company.

⁶¹ *The Sun*, Baltimore, Apr. 4, 1910.

⁶² *Md. Senate Journal*, 1910, p. 1900.

call arose, but he disregarded them and proceeded on his way out of the chamber. At this point, Senator Lee, one of the defenders of the bill, threatened to declare the chair vacant and to move the election of Senator Goslin as President. This motion would doubtless have been carried, and one of the most sensational incidents in the history of Maryland politics would have been carried to its dramatic climax, but Gorman turned back hastily, and promised to take up the utilities bill on Monday under a suspension of the rules, if opposition to the adjournment were dropped. This promise satisfied the supporters of the bill.⁶³ On Monday, the Finance Committee asked for a return of the bill. They were given an hour within which to reconsider, and returned the bill with the amendments withdrawn.⁶⁴ One final opposing effort was made against the bill when an attempt was made to affix the "Pairo Bill" to the "Straus Bill" in an amendment offered from the floor.⁶⁵ This was rejected promptly by a vote of 20 to 5.⁶⁶ The rules were then suspended by a vote of 26 to 1, the "Straus Bill" was put upon its third reading, passed by a vote of 25 to 2 and returned to the House of Delegates.⁶⁷

⁶³ The Senate Journal does not contain any of the dramatic scenes here described. There is merely a record of the adjournment upon Biddison's motion at 11.55 P. M. The clock had, of course, been stopped. The above account is based on the stories appearing in the newspapers. *Baltimore News*, Apr. 3, 1910; *The Sun*, Baltimore, Apr. 4, 1910.

⁶⁴ *Md. Senate Journal*, 1910, p. 1927.

⁶⁵ *Ibid.*, pp. 1927-1932.

⁶⁶ *Ibid.*, p. 1933.

⁶⁷ *Ibid.*, pp. 1933-1934.

CHAPTER II

THE PUBLIC SERVICE COMMISSION LAW OF MARYLAND

The "Straus Bill" became the Public Service Commission Law of Maryland by the Governor's approval on April 5, 1910, as Chapter 180 of the Acts of 1910.¹ Although as a piece of legal writing it is repetitious and needlessly involved, no attempt has since been made to remedy even its most obvious faults. The first and most patent defect is that no particular attempt was made to arrange the law as a systematic unit, or to present it logically. The various sections are placed together without regard to their relation to preceding and succeeding sections, or to sections contained elsewhere in the law. Even within a single section utterly unrelated propositions are brought together. The second and also very obvious defect, is the needless repetition which helps to swell the bulk of a statute, which even at its best would be extended and involved. Long sections, for example, set out the jurisdiction of the Commission in respect of the approval of security issues of common carriers, and are then repeated verbatim for gas or electric corporations. This same sort of repetition occurs in connection with the sections relating to authorization for beginning construction, abandonment of franchises, and numerous other subjects.

These criticisms are not directed toward the substantive content of the law, but toward its form and arrangement. The formal defects are so substantial as to make impossible an intelligible consideration of the law in the order in which it appears in the Maryland Code. With a view to surmounting the shortcomings of the law as codified, the following classification has been adopted:

- I. The Organization of the Public Service Commission of Maryland.
- II. The Persons Subject to Regulation by the Public Service Commission, and the Duties Imposed Upon Them.
- III. The Jurisdiction of the Commission.

¹ For a discussion of the constitutionality of the law see *Thrift v. Towers*, 127 Md. 54 (1915).

IV. Procedure Before the Commission.

V. Procedure Before the Courts.

VI. Penalties.

The statutory law as it exists to-day presents very few striking differences from the "Straus Bill" adopted in 1910. There have been numerous restatements of particular sections, but little that is genuinely novel. With regard to the jurisdiction of the Commission, the only substantial enlargement has been with regard to jurisdiction over motor vehicles engaged in the public transportation of passengers and freight, and over taxicabs. As to the organization of the Commission, the only material change has been the substitution of People's Counsel for the Assistant General Counsel. Other changes in the law, such as the provisions which permit the Commission to fix minimum as well as maximum rates, or to suspend the operation of rate schedules, pending investigation, are significant, but can hardly be pointed to as important advances over a twenty year period.

I. THE ORGANIZATION OF THE PUBLIC SERVICE COMMISSION OF MARYLAND

The Public Service Commission of Maryland, which was created by Chapter 180 of the Acts of 1910, was designated as the head of the Department of Public Utilities by the "State Reorganization Act" of 1922.² This change is the only one of its kind which has occurred since the formation of the Commission, and, in itself, effected no other change in the organization, except to replace the Assistant General Counsel by the People's Counsel.³

THE COMMISSIONERS

The Commission consists in three members appointed by the Governor,⁴ one of whom is designated as the chairman. They hold office for a period of six years.⁵ Each Commissioner must be a qualified voter of the State, at least twenty-five years of age, and a resident for "at least five years next preceding his

² *Laws of Md.*, 1922, Ch. 29, Part XIII, Sec. 1.

³ *Ibid.*, Sec. 2.

⁴ *An. Code, P. G. L.* 1924, *Sup.* 1929, Art. 23, Sec. 349.

⁵ *Id.* The act also contains a saving clause, which provides that if the six year term were held unconstitutional it was to be reduced to a two year term.

appointment and qualification.”⁶ Commissioners are eligible for reappointment, and vacancies for unexpired portions of terms are filled by the Governor.⁷

The power of removal of the Commissioners, as well as the power of appointment, is vested in the Governor. Removal of Commissioners may occur “for inefficiency, neglect of duty, or misconduct in office.” The Commissioner so removed must, however, be given an opportunity to be heard publicly in his own defense, either in person or by counsel upon no less than ten days’ notice.⁸

OFFICE OF THE COMMISSION, SEAL, MEETINGS

The office of the Commission is located in Baltimore City, and is open for business from half past eight, A. M., until half-past five, P. M., on every week day, and until twelve o’clock noon on Saturday. Some responsible representative of the Commission must be on duty during these hours.⁹

The Commission is provided with an official seal, “prepared and furnished by the Secretary of State.”

The Commission is required to hold meetings at least once a week, and, for the purpose of the weekly meeting, as for all other purposes, a majority of the Commission constitutes a quorum. Meetings may be held at any time, and at any place within the state. It is also possible for the Commission to authorize one of its members to hold or undertake any investigation, inquiry, or hearing; but for his findings to be deemed the decision and order of the Commission, the statute requires that they be confirmed and approved by the entire Commission and filed in its office.¹⁰

SALARIES OF THE COMMISSIONERS

At present the salaries of the Commissioners are six thousand dollars (\$6,000) per annum for the chairman, and five

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Ibid.*, Art. 23, Sec. 351. It is interesting to note that the law originally required the office to be open from eight o’clock, A. M., until nine o’clock, P. M. The change in the law was made by Ch. 445 of the *Laws of Md.*, 1914.

¹⁰ *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 23, Sec. 351.

thousand dollars (\$5,000) per annum for each of the other two Commissioners.¹¹

GENERAL COUNSEL

An attorney-at-law of the State of Maryland is appointed by the Governor, upon recommendation of the Commission, to act as General Counsel to it. His term of office is six years, and he is eligible for reappointment. He may be removed by the Governor for "neglect of duty or misconduct in office." In case of his removal, he is entitled to a public hearing upon no less than ten days' notice.¹² The General Counsel acts in the capacity of legal advisor to the Commission and, at the discretion of the Commission, as its legal representative in all cases to which it may be a party. If so directed by the Commission, he may intervene in any case in which some question concerning the Public Service Commission Law may be involved.¹³

The salary of the General Counsel is fixed at forty-eight hundred dollars (\$4,800) per annum.¹⁴

¹¹ *Ibid.*, Art. 23, Sec. 349. Under the terms of the statute as originally passed, the Commissioners were to be paid in part by the State of Maryland and in part by the City of Baltimore. The chairman received a salary of six thousand dollars (\$6,000.) per annum, and the other two commissioners five thousand dollars (\$5,000.) each. Because it was feared that a salary in excess of three thousand dollars (\$3,000.) per annum might be declared unconstitutional, it was further provided that the State pay three thousand dollars (\$3,000.) to each of the commissioners and that Baltimore City pay the balance (*Laws of Md.*, 1910, Ch. 180, Sec. 2). In 1914 the salary of all the commissioners was placed upon the basis of six thousand dollars (\$6,000.) per annum. The increase was to be paid by Baltimore City, and to begin upon the expiration of the terms of the various incumbents, (*Ibid.*, 1914, Ch. 750). The constitutional question which was responsible for the peculiar arrangement for sharing the salaries of the commissioners was disposed of in 1915 when the Court of Appeals decided that Art. XV, Sec. 1 of the Maryland Constitution did not prohibit the payment of salaries in excess of three thousand dollars (\$3,000.) per annum to the Commissioners. This section of the Constitution "was intended to apply to that class of officers whose pay or compensation was derived from fees which they were entitled to receive by law for the performance of their official duties." *Thrifty v. Laird*, 125 Md. 55 at p. 63. Following this decision, the General Assembly established the present rates of compensation, with a saving provision for any Commissioners who might benefit by the increase granted in Ch. 750 of the *Laws of Md.*, 1914, and exempted Baltimore City from any further contributions, after October 1, 1916, (*Laws of Md.*, 1916, Ch. 713).

¹² *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 23, Sec. 349.

¹³ *Ibid.*, Art. 23, Sec. 353.

¹⁴ *Ibid.*, Art. 23, Sec. 349. The salary of the General Counsel was originally fixed at forty-eight hundred dollars (\$4,800.) and Baltimore City required to contribute eighteen hundred dollars (\$1,800.) of this amount. The reason for this procedure was the same as that which prompted the division of the Commissioners' salaries between Baltimore City and the State of Maryland.

PEOPLE'S COUNSEL

In addition to the General Counsel, the other legal aid provided for the Commission is the People's Counsel. He is appointed by and subject to removal by the Governor at his pleasure. He receives an annual salary of forty-five hundred dollars (\$4,500).¹⁵

The People's Counsel is not to be regarded as interfering with appearance by counsel on behalf of any parties to any proceedings before the Commission. It is, however, his duty to participate in the preparation of pleadings, the investigation of facts, and the actual hearing of cases before the Commission. This participation by the People's Counsel, according to the law, relates to matters of complaint, in respect of the violation of some duty by any person subject to the regulation of the Commission.¹⁶

OTHER OFFICERS AND EMPLOYEES OF THE COMMISSION

The Commission is also provided with a secretary, appointed by it, who holds office at its pleasure. He has general charge of the office, supervises the clerical work, maintains the

When the entire charge for the Commissioners' salaries was shifted to the State in 1916 (*Laws of Md.*, 1916, Ch. 713) after *Thrift v. Laird* (125 Md. 55), the change was also made with respect to the salary of General Counsel. Although provided for in the original Act of 1910 the office of General Counsel was abolished in 1924 and the duties shifted to the Attorney General's office, (*Laws of Md.*, 1924, Ch. 534). This change was unsatisfactory and the office was re-established in 1927 (*Ibid.*, 1927, Ch. 201). This experiment was contemplated for many years as will be seen below in the examination of some of the legislation with respect to the Public Service Commission Law which failed of enactment.

¹⁵ *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 23, Sec. 349.

¹⁶ *Ibid.*, Art. 23, Sec. 353. It will be noted below in examining the work of the Public Service Commission, that the People's Counsel has not restricted his activities to complaints before the Commission but has participated in hearings on applications for the issuing of securities, the construction of equipment, the acquisition of new property, the extension of service, and the issuance of permits to operators of public motor vehicles. The office of People's Counsel was established in 1922 to replace that of Assistant to the General Counsel, which had been established in 1910 and was thereby abolished (*Laws of Md.*, 1922, Ch. 29, Sec. XIII). When originally established the duties of the General Counsel and of his assistant, were the same as now prescribed for the General Counsel. In 1912 (*Ibid.*, 1912, Ch. 563) the duties were extended to embrace those now imposed on the People's Counsel. In 1922, therefore, the office of People's Counsel, presented no material change from that of Assistant to the General Counsel. But in 1924, when the office of General Counsel was abolished, the office of People's Counsel was retained with the duties now assigned to it. When the office of General Counsel was re-established in 1927, the duties reassigned to it were stated separately from those of the People's Counsel.

records and keeps the files of the Commission, and may administer oath whenever this may be necessary in the performance of his duties, or those of the Commission.¹⁷

The Commission was originally granted the power to choose clerks, stenographers, engineers, inspectors, and all its employees, but these positions now come under the terms of the "Merit System Law," and are under the direct supervision of the State Employment Commission.¹⁸ The only positions specifically exempt from the operation of the "Merit System Law" are those of the Commissioners, the General Counsel and the People's Counsel.

PROHIBITIONS ON COMMISSION AND ITS EMPLOYEES

All persons connected with the office of the Public Service Commission are required to take the oath of office.¹⁹ Persons holding any official relation to any persons, subject to regulation by the Commission are prohibited from holding any office in it, in any capacity whatsoever.²⁰ The Commissioners and all persons in any way connected with the Commission are specifically prohibited from soliciting employment for anyone with any of the utilities subject to the supervision of the Commission. The Commissioners and all employees of the Commission are prohibited from accepting any employment, the duties of which would be incompatible with their positions with the Commission. The utilities are prohibited from offering gratuities to any person connected with the Commission. The violation of any of these prohibitions by any person connected with the Commission furnishes grounds for removal from the office, or position held by him.²¹

APPROPRIATIONS FOR COMMISSION

Appropriations for the maintenance of the Public Service Commission are now made under the budget system.²² The cost

¹⁷ *An. Code, P. G. L., 1924, Sup. 1929, Art. 23, Sec. 349.* The present incumbent of the office of secretary receives a salary of five thousand four hundred dollars (\$5,400.) per annum. This position is now under the "Merit System."

¹⁸ *Id.* Gives the original powers of the Commission in this field.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Ibid., Sup. 1929, Art. 23, Sec. 354.*

²² Constitutional Amendment proposed in Ch. 159 of the *Laws of Md., 1916*, to amend Sec. 52 of Art. III of the Maryland Constitution.

of maintaining the Public Service Commission will be discussed below, in a subsequent chapter.

OTHER PROVISIONS

The state auditor is required to make biennial examination of the accounts of the Commission.²³

The Commission is authorized to charge fees fixed by law for copies of, certification of, or authentication of records, official documents, official orders, annual reports of utilities, evidence, and proceedings.²⁴ The rates fixed by law do not apply, however, to stenographers' fees for furnishing type-written copies of evidence in hearings before the Commission, but these fees may be regulated by the official order of the Commission.²⁵ No fees may be charged to public officers for documents of an official nature, furnished to them for use in an official capacity.²⁶

The records, documents and proceedings of the Commission are all matters of public record, and all facts and information in the possession of the Commission must be made public, and open to inspection by the public at all reasonable times. But whenever the Commission deems it to be in the public's interest, it may withhold information for a period not to exceed ninety days.²⁷

II. THE PERSONS SUBJECT TO REGULATION BY THE PUBLIC SERVICE COMMISSION AND THE DUTIES IMPOSED UPON THEM

THE PUBLIC UTILITIES

The general jurisdiction of the Public Service Commission is made to extend to "railroads and street railroads lying within this state," to "street railroads any portion of whose lines lie within any incorporated city or town within this state, containing not less than two thousand inhabitants," to "such portions of the lines of any other railroad as lie within this state, . . . so far as concerns the construction, maintenance, equipment, terminal facilities and local transportation facilities and

²³ *An. Code, P. G. L., 1924, Art. 23, Sec. 413.*

²⁴ *Ibid.*, Art. 23, Sec. 355.

²⁵ *Ibid.*, Art. 23, Sec. 356.

²⁶ *Ibid.*, Art. 23, Sec. 355.

²⁷ *Id.*

local transportation of persons or property within this state," to "the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the State of Maryland, . . . and to gas and electric plants," and "to persons or corporations owning, operating, leasing or controlling the same," "to any common carriers operating or doing business within the state," "to all water companies and to the land, property, dams, water supplies, canals or power stations thereof, and the operation of the same, within this state," "to all persons, corporations, or partnerships engaged in the transportation of property or freight,"²⁸ to "bridges now or hereafter erected by any corporation authorized to charge and collect toll,"²⁹ "to taxicabs or other motor vehicles used in the public transportation of passengers within the State of Maryland,"³⁰ to "heat and refrigerating corporations,"³¹ to "telegraph companies, telephone companies, telephone lines, and telegraph lines within this state, and to persons and corporations engaged in the transmission of intelligence within this state by telephone or telegraph,"³² and "to all automobile transportation companies, and all persons or associations of persons, whether incorporated or not, operating automobiles or motor cars, or motor vehicles for public use, in the conveyance of persons or property within this state."³³

²⁸ *Ibid.*, Art. 23, Sec. 350. The power of the Commission over water companies applies even when water is being furnished to a limited number of consumers, as in a real estate development. *Yeatman v. P. S. C.*, 126 Md. 513 (1915).

²⁹ *An. Code, P. G. L. 1924, Sup. 1929*, Art. 23, Sec. 348.

³⁰ *An. Code, P. G. L. 1924*, Art. 23, Sec. 361. By Ch. 485 of the *Laws of Md.*, 1931, special new powers with respect to taxicab companies were specifically vested in the Commission. These provisions are limited to taxicabs in cities with a population of fifty thousand or more. They are required to obtain permits from the Commission, which may grant such permits for a period not to exceed one year. Severe penalties are provided for the violation of this requirement or of any rules or regulations which the Commission may prescribe for taxicabs. The owners of taxicabs for which permits are granted must either take out liability insurance or deposit an adequate bond with the Commission. The other provisions of this chapter are of a more formal nature. This law was passed to give the Commission the power which it sought and failed to obtain in *P. S. C. v. Sun Cab Company*, 160 Md. 476 (1931).

³¹ *An. Code, P. G. L. 1924*, Art. 23, Secs. 346, 402; *Homer v. Baltimore Refrigerating Company*, 117 Md. 411 (1912).

³² *An. Code, P. G. L. 1924*, Art. 23, Sec. 399.

³³ *Ibid.*, *Sup. 1929*, Art. 23, Sec. 347.

The jurisdiction of the Commission with respect to these utilities is limited so as to apply only to activities carried on within the State of Maryland.³⁴ The properties and equipment of the utilities are enumerated with great particularity by the statute so as to give the Commission jurisdiction over them. The owners or operators of these properties are brought within the scope of the law, no matter what their form of business organization or method of operation.³⁵ The statute is also specifically extended to include municipal corporations engaged in the sale and manufacture of gas or electric power for other than municipal purposes.³⁶ The Mayor and City Council of Baltimore was, however, specifically exempted in the original act from the operation of this provision, insofar as it requires the authorization of the Commission for building, maintaining or operating a plant for the manufacture and supplying of gas and electric power for other than municipal purposes.³⁷

The attempt was also made to extend this exemption to the City of Hagerstown in 1924, but the legislative act placing Hagerstown in the same class as Baltimore was declared unconstitutional.³⁸

DUTIES IMPOSED UPON PUBLIC UTILITIES

The statutory provisions which govern the general duties of the public utilities subject to the jurisdiction of the Public

³⁴ *Ibid.*, Art. 23, Sec. 416. When natural gas is brought into Maryland from the gas fields of West Virginia, and is not delivered to the consumers in the original pipe lines, but is forced through intermediate service lines, the sale of this gas is not considered as interstate commerce. The Public Service Commission would, therefore, have jurisdiction over this business, and could require the company to file rate schedules. The conclusions of the court were derived from the "original package doctrine." *West Virginia and Maryland Gas Company v. P. S. C.*, 134 Md. 137 (1919).

³⁵ *An. Code, P. G. L.* 1924, Art. 23, Sec. 346.

³⁶ *Ibid.*, *Sup.* 1929, Art. 23, Sec. 347.

³⁷ *Ibid.*, Art. 23, Sec. 390.

³⁸ The City of Hagerstown had been engaged in selling electricity to its citizens for many years before the passage of the Public Service Commission Law, but notwithstanding, it was required in 1923 to obtain permission from the Public Service Commission for the construction of a new plant to manufacture electric power. *Hagerstown v. Littleton*, 143 Md. 591 (1923). Hagerstown then had recourse to the General Assembly which exempted it specifically from the statutory requirement on municipal corporations engaged in the manufacture of electric power (*Laws of Md.*, 1924, Ch. 48) together with all municipalities with a population in excess of 20,000 and an assessable basis in excess of \$15,000,000. This act was held unconstitutional, however, as class legislation without any reasonable basis for the classification. *Littleton v. Hagerstown*, 150 Md. 163 (1926).

Service Commission are brief. They are required to furnish with respect to the activities in which they are engaged "such service and facilities as shall be safe and adequate and in all respects just and reasonable" at charges which "shall be just and reasonable and not more than allowed by law or by order of the Commission."³⁹

This statement of the general principles which govern service and charges of the utilities is supplemented by several sections imposing specific duties on the utilities, particularly common carriers. Common carriers are required to furnish sufficient and suitable cars to meet the needs which can be normally anticipated. If they find demands are unusually heavy and cannot all be met, the available facilities are to be distributed among the applicants without discrimination.⁴⁰ They are also required to afford proper facilities for the "interchange of passengers, freight and property traffic between the lines owned, operated, controlled or leased by them . . . and the lines of every other common carrier." No discrimination as to charges or services may be made for these transfers by the carrier.⁴¹ Common carriers are forbidden to grant free transportation, or to allow special rates or charges for their services lower than those properly fixed.⁴² Exemptions⁴³ from this requirement are extended, however, to "officers, employees, agents, pensioners, surgeons, physicians, attorneys-at-law" of the railroad and their families, and to the interchange of free, or reduced transportation between railroads on behalf of their "officers, agents, employees, attorneys and surgeons and their families."

³⁹ *An. Code, P. G. L.*, 1924, Art. 23, Secs. 362, 387, 400, 401, 402. For the effect of the Public Service Commission Law as an abrogation of prior statutes with respect to rates of public utilities, see, *Crisfield v. C. & P. Tel. Co.*, 131 Md. 444, (1917), *Westminster v. Consolidated Public Utilities Co.*, 132 Md. 374, (1918), and *Bay Bridge Corporation v. The County Commissioners of Queen Anne's County, Maryland*, 160 Md. 398, (1931). The jurisdiction of the Commission over rates charged by public utilities superseded all previous special legislation on the subject. No repeal of the prior acts of the Legislature was required. *Gregg v. P. S. C.*, 121 Md. 1 (1913), *Chenoweth v. P. S. C.*, 143 Md. 622 (1923).

⁴⁰ *An. Code, P. G. L.*, 1924, Art. 23, Sec. 369.

⁴¹ *Ibid.*, Art. 23, Sec. 368.

⁴² A commission paid by the carrier to a third party, which does not accrue to the benefit of the user of the service is not a rebate. *Mundon v. Taxicab Co.*, 151 Md. 449 (1926).

⁴³ Common carriers may be liable for injuries suffered by gratuitous passengers legally carried. *Smith v. Northern Central Rwy. Co.*, 119 Md. 481 (1913).

The limitation against free transportation and discrimination is restricted so as not to apply to children under five years of age, who may be carried free. Nor does it prevent the railroad from carrying persons, or property free for the relief of general epidemics or other calamities, nor from carrying free of charge, or at reduced rates, "ministers of religion, inmates of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work," "indigent persons," "employees of sleeping car companies, express companies, telephone and telegraph companies doing business along the line of the issuing carrier," "post office and customs employees," "newsboys on trains," "persons injured in accidents or wrecks and those attending them, and also in rendering services to the United States, state or any municipal government; in carrying property to or from fairs for exhibit there," or for any transportation free when so provided by law. The general prohibitions upon the power of the common carriers to reduce rates may not be applied to the issuance of commutation, mileage or excursion tickets or half-fare tickets to children under twelve years of age.⁴⁴

Provisions are also made to prevent discrimination by prohibiting false billing, false classifications, or false weighing.⁴⁵ Common carriers are prohibited from charging more for a shorter than for a longer haul under similar circumstances, where the shorter distance is included within the longer.⁴⁶ Railroads are required to maintain switch and side-track connections with a private side-track owned by a shipper, whenever such connections can be installed with reasonable safety and there is sufficient volume of business to justify it.⁴⁷

Gas and electric companies, telephone and telegraph companies and all other utilities are prohibited from making special preferences with regard to services, or from making any rebates or concessions with regard to rates or charges. But these provisions do not prohibit a sliding scale in schedules for gas and electric charges.

All acts passed by the legislature prior to the passage of the public service commission law which prescribed prices for gas

⁴⁴ *An. Code, P. G. L., 1924, Art. 23, Sec. 365.*

⁴⁵ *Ibid.*, Art. 23, Sec. 367.

⁴⁶ *Ibid.*, Art. 23, Sec. 369.

⁴⁷ *Ibid.*, Art. 23, Sec. 363.

or electric power were repealed, and jurisdiction over these matters was vested in the Commission exclusively.⁴⁸

Companies or persons engaged in running steamboat excursions during May, June, July and August between Baltimore City and other places in Maryland are permitted to give free transportation between these places in compensation for advertising services rendered.⁴⁹

These are the principal provisions prescribing the general duties and obligations of the utilities with respect to rates and services.

MISCELLANEOUS SUBJECTS OF REGULATION

In addition to the general jurisdiction of the Public Service Commission with respect to the persons, property, and services enumerated above, the Commission is granted limited jurisdiction over a miscellaneous group of subjects and commissions. It is clearer to list these miscellaneous matters and define the extent of the jurisdiction of the Commission with respect to them at this point, rather than under the heading of the jurisdiction of the Commission. Some of these laws, which purport to attach additional duties to the Commission, are of historical interest only, and do not represent a significant part of the Commission's activities.

For example, the Commission has jurisdiction to hear appeals in cases where a fine has been imposed for the violation of the prohibition against the use of a common drinking cup.⁵⁰ It was given authority to fix rates on a steamboat line established by the State Roads Commissions.⁵¹ In 1918 it was authorized to place a valuation on the plant of the Washington County Water Company which was being purchased by the Mayor and City Council of Hagerstown,⁵² and in 1924 similar powers were conferred in respect of the plant, water mains, and franchise of the Salisbury Water Company, in the event that it were purchased by the Salibury Water and Sewer Commission.⁵³ At other times jurisdiction was conferred on the Public Service Commission to deal with the contract between the Mayor and City Council of Baltimore and the County Com-

⁴⁸ *Ibid.*, Art. 23, Secs. 387, 400.

⁴⁹ *Ibid.*, Art. 23, Sec. 366.

⁵⁰ *Laws of Md.*, 1912, Ch. 156.

⁵¹ *Ibid.*, 1916, Ch. 708.

⁵² *Ibid.*, 1918, Ch. 58.

⁵³ *Ibid.*, 1924, Ch. 494.

missioners of Anne Arundel County in regard to the purchase of water by the latter from the former,⁵⁴ and, also, with regard to the purchase of water by the Commissioners of Baltimore County from the Mayor and City Council of Baltimore.⁵⁵

In 1914, a local law applicable to Baltimore County provided that owners of property might be required to connect their premises with some private sewerage system, if such were available, and no public system were provided. Orders to that effect could be issued by the State Board of Health. The rates and terms, upon which such connection was to be made, were subject, however, to the approval of the Public Service Commission before any resident, or owner, could be required to carry out the orders of the State Board of Health.⁵⁶

These cases of special jurisdiction, enumerated above, are not of great importance in a consideration of the activities of the Commission.

Of greater interest, however, are the powers conferred on the Commission in respect to the Sanitary Commission of Anne Arundel County and the Washington Suburban Sanitary Commission. These commissions were created to take over, as governmental agencies, the control of the water supply, sewerage, and drainage systems within the respective territories assigned to them. They are authorized to issue bonds, provided that they first obtain the approval of the Public Service Commission. The requirements governing the approval of these issues are similar to those provided for security issues of public utilities.⁵⁷

OPERATORS OF MOTOR VEHICLES

A large and very important group of services brought under the special jurisdiction of the Public Service Commission is the public transportation of merchandise and passengers by motor vehicles.⁵⁸

The law requires that operators of vehicles engaged in public transportation must secure permits from the Public Service

⁵⁴ *Ibid.*, 1927, Ch. 466. See also *An. Code, P. G. L.*, 1924, Art. 23, Sec. 403.

⁵⁵ *Laws of Md.*, 1922, Ch. 289, and *Ibid.*, 1924, Ch. 494.

⁵⁶ *Ibid.*, 1914, Ch. 804.

⁵⁷ For Washington Suburban Sanitary Commission see *Laws of Md.*, 1918, Ch. 122; *Ibid.*, 1920, Ch. 518; *Ibid.*, 1924, Chs. 189 and 469; *Ibid.*, 1927, Ch. 506. For Anne Arundel Sanitary Commission see *Ibid.*, 1922, Ch. 245; *Ibid.*, 1924, Ch. 168; *Ibid.*, 1927, Ch. 676.

⁵⁸ *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 56, Secs. 251-266 incl.

Commission for each vehicle used and present them annually to the Commissioner of Motor Vehicles at the time of making application for registration tags.⁵⁹ Passenger motor vehicles, used exclusively for the transportation of pupils to or from schools, and freight motor vehicles used in the transportation of milk to cooling stations were exempted from the application of these provisions.⁶⁰ The law specifically includes in its provisions, however, motor vehicles used in the transportation of passengers, freight, and merchandise for members or shareholders of coöperative associations.⁶¹ Motor vehicles which operate under permits granted by the Public Service Commission are given distinguishing tags. These motor vehicles are required to operate on the routes and on the schedules set forth in the applications made for licenses for them. Any changes from these routes and schedules may be made only by special permission of the Public Service Commission, except when the change furnishes service more frequently than the original schedule provided. Even when operations are at greater frequency than formerly, the change must be reported to the Public Service Commission, and, if it considers such change "prejudicial to the public welfare and convenience," it may limit or deny this privilege of changing the schedule.

Operators of motor vehicles are permitted to substitute reserve vehicles for any which may be temporarily out of order. Seasonal permits for a portion of a year may also be approved by the Commission.

Any violation of these provisions in regard to the motor vehicle laws is punishable by the Public Service Commission by a revocation, or suspension of the permits issued, after hearing, upon no less than three days' notice. Such revocation by the Commission automatically revokes the license issued by the Commissioner of Motor Vehicles.⁶²

The Public Service Commission is required to investigate the expediency of granting the permits applied for, and if it deems the issuance of the permit to be inadvisable, the Commission may refuse to issue such a permit. These permits may be issued for any period of time not to exceed twenty years.

⁵⁹ *Ibid.*, Art. 56, Secs. 251 and 258.

⁶⁰ *Ibid.*, Art. 56, Secs. 252 and 259.

⁶¹ *Id.* By Chapter 380 of the 1931 *Laws of Md.*, farmers who haul merchandise to market for their neighbors are excluded from the operation of these sections, unless they haul on regular schedule.

⁶² *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 56, Secs. 253 and 260.

For passenger vehicles in Baltimore City, however, the time limit is one year. The Commission has authority to prescribe rules for the operation of public motor vehicles, and for violation of these rules may revoke the permit issued.⁶³ Monetary penalties ranging from five dollars to one hundred dollars are also prescribed for violations of the law, or the rules and regulations of the Commission.⁶⁴

The motor vehicle provisions of the law have been the subject of numerous adjudications by the Court of Appeals. In a criminal prosecution it was early declared that the discretion of determining whether, or not, a vehicle comes within the classes designated by law as requiring permits from the Commission, rests with the Commission itself. The law may not be evaded by merely an occasional change in the route of the vehicle.⁶⁵ In a case in which the route for a truck used in public transportation was governed by a contract between the owner and the operator, the truck was not, thereby, exempted from the requirement of obtaining a permit from the Commission.⁶⁶ Another form of evasion, which proved unsuccessful, was the attempt of an owner to escape the effect of the operation of the law, by having passengers of his bus enter into a chartering agreement.⁶⁷ A company engaged in the sale and distribution of milk and transportation of it for the producers came under the operation of this statute.⁶⁸ Before the passage of the present sections requiring Employees' Certificates of Convenience, a vehicle used for the carrying of employees to and from their place of employment did not come within the scope of the law.⁶⁹

The constitutionality of the regulation of motor vehicles was clearly asserted, or implied, in all the foregoing cases, yet it was restated by the court in a case dealing with the applicability of the provisions of the law to coöperative associations.⁷⁰

The jurisdiction of the Commission with respect to the regulation of motor vehicles may not be exercised so as to interfere

⁶³ *Ibid.*, Art. 56, Secs. 255 and 262.

⁶⁴ *Ibid.*, Art. 56, Secs. 256 and 263.

⁶⁵ *Smith v. State, Jaffa v. State*, 130 Md. 482 (1917).

⁶⁶ *Goldsworthy v. P. S. C.*, 141 Md. 674 (1922).

⁶⁷ *Restivo v. P. S. C.*, 149 Md. 30 (1925).

⁶⁸ *P. S. C. v. Western Md. Dairy Co.*, 150 Md. 641 (1926).

⁶⁹ *P. S. C. v. Wildason*, 135 Md. 677 (1920).

⁷⁰ *Coöperative Assn. v. Baughman*, 153 Md. 297 (1927).

with interstate commerce. This conclusion, which was enunciated by the United States Supreme Court, overruled the opinion of the Court of Appeals that the control of its highways was a matter for regulation by the State. Justice McReynolds filed a dissenting opinion in the Supreme Court case.⁷¹ The general provisions governing the power of the Commission with respect to interstate traffic are presented below.

Special provisions are, also, made for the issuance of Employees Certificates of Convenience. These certificates are issued to any employee in the State who owns a "pleasure passenger vehicle" which he proposes to use for the transportation of other employees to and from their place of employment, if there appears to be evidence that no other convenient means of public transportation is available.⁷² Employees who operate cars under these certificates are furnished with special license plates for display on their cars.⁷³ Application for these special license plates must be made annually, and a duplicate of the Certificate of Convenience issued by the Public Service Commission must be carried by the owner in his car.⁷⁴ Violation of these provisions concerning Certificates of Convenience is a misdemeanor, for which penalties are prescribed.⁷⁵

III. JURISDICTION OF THE COMMISSION

In the discussion of the public utilities subject to regulation by the Public Service Commission, some indication has been given of jurisdictional powers of the Commission. Concerning certain specially defined powers, such as those in regard to the operation of public motor vehicles, and the issuance of securities by the sanitary commissions, the jurisdiction of the Commission has already been fully set forth.

In a discussion which enumerates powers, it must be borne in mind that they are not distinct and independent grants of authority to be exercised separately. Many of these powers are dependent upon, and supplement, each other. For the purpose of presenting the powers of the Commission, they are subsumed under three heads: (1) the judicial, (2) the administrative, and (3) the visitorial. Under the judicial authority,

⁷¹ *Bush v. P. S. C.*, 143 Md. 570 (1923). *Bush v. Maloy*, 267 U. S. 317 (1925).

⁷² *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 56, Sec. 252 A.

⁷³ *Ibid.*, Art. 56, Sec. 252 B.

⁷⁴ *Ibid.*, Art. 56, Sec. 252 D.

⁷⁵ *Ibid.*, Art. 56, Sec. 252 E.

are considered those powers of the Commission which confer upon it the authority of a tribunal for the disposition of complaints against the public utilities. These complaints may relate to violations of the law; or of regulations, or of orders promulgated by the Commission. The administrative powers of the Commission are those defined by the sections of the law which require public utilities to obtain permission from the Commission to perform certain acts, such as issuing securities, constructing equipment, abandoning franchises, and others. The visitorial powers are the most far reaching. They include the authority vested in the Commission to require annual reports, the filing of schedules, and the maintenance of uniform accounting systems. Under this division are also included the general supervisory powers of the Commission: the investigation of services and methods of doing business, access to the accounts, the inspection of the plant and premises of public utilities, the inspection of meters and the determination of valuations. Other visitorial powers include the authority to require improvements whenever they are deemed necessary, the power to suspend the enforcement of new rates, and the power to grant emergency increases. These powers will now all be considered in detail.

(1) JUDICIAL POWERS OF THE COMMISSION

Under the head of the judicial powers of the Commission, are considered the various types of complaints over which the Commission has jurisdiction. Complaints may be filed against a public utility on account of "anything or act done or omitted to be done . . . in violation, or claimed to be in violation, of any provision of law or of the terms or conditions of its franchise or charter, or of any order of the Commission, or as being unfair, unreasonable, unjustly discriminating or unduly preferential." The utility complained of is notified, and, if no reparation for the injury is made, the Commission is authorized to proceed with the investigation of the complaint and to take such action as it may deem proper.⁷⁶ If the public utility fail to make reparation, the matter is set down for hearing before the Commission. The hearings are frequently supplemented, however, by the investigations on the part of employees, or of officials of the Commission.

⁷⁶ *An. Code, P. G. L.*, 1924, Art. 23, Secs. 372, 395. See *Carter v. Suburban Water Company*, 131 Md. 95 (1917). In that case the jurisdiction of the Commission with regard to disputes concerning billing is discussed.

Separate provision is also made for complaints against railroads for failure to install switch or sidetrack connections after written application for them has been made. The Commission is authorized to hold hearings in such cases and to order the construction of such switch or sidetrack connections as it considers justifiable.⁷⁷

(2) ADMINISTRATIVE POWERS OF THE COMMISSION

The second general head under which has been classified the jurisdiction of the Commission is its administrative powers, or those powers which it exercises in granting permission or authority to the public utilities subject to its supervision.

SECURITY ISSUES

One of the most important of the administrative powers granted to the Commission covers its power to approve the issuance of securities. Public utilities are not permitted to issue securities payable at a period more than twelve months from the date of issue, unless they first obtain the permission of the Public Service Commission and the securities must be issued for one or more of the five following purposes:

- (1) "For the acquisition of property, the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service."
- (2) For "the discharge or lawful refunding of its obligation."
- (3) "For the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the corporation not secured by or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation within five years next prior to the filing of an application with the Commission for the required authorization for any of the aforesaid purposes except maintenance of service and except replacements, in cases where the applicant shall have kept its accounts and vouchers of such expenditures in such manner as to enable the Commission to ascertain the amount of moneys expended and the purposes for which such expenditure was made."

⁷⁷ *An. Code, P. G. L.*, 1924, Art. 23, Sec. 363.

- (4) "When necessary or desirable at the discretion of the Commission to cause the aggregate capitalization to conform to the fair value of the property of the corporation as established by the Commission."⁷⁸
- (5) "When necessary for the capitalization of its earnings expended prior to the first day of April, nineteen hundred and fourteen, in the acquisition of property, the construction, maintenance, completion, extension or improvement of its facilities; provided that the applicant shall have kept its accounts and vouchers in such manner as will enable the Commission to ascertain the amount so expended and the purpose for which such expenditures were made, and that application for the order of the Commission be made on or before the first day of April, nineteen hundred and fifteen."

It is apparent that the third purpose merely extends indefinitely the provisions of the fifth purpose, which is limited in its application to expenditures prior to April 1, 1914.⁷⁹

The law also contains a number of provisions, which were obviously designed to prevent the overcapitalization of public utilities. These provisions seem to look in two directions, however. They impose specific limitations on what may be capitalized, and then impose conditions upon the effectiveness of these limitations. Thus, the Commission has no power to authorize the capitalization of a franchise by a corporation for an amount in excess of what has actually been paid to the State or to some political subdivision of it as consideration for the grant of this franchise. Contracts of consolidation may not be used as collateral for bond issues. Leases may not be capitalized as the basis for stock issues. The aggregate capitalization of a consolidated corporation may not exceed the sum of the capital stock of the corporations consolidated, together with any cash actually paid in.⁸⁰ The full force of the above provisions is then modified by the condition expressed in the law that they are to be so construed as not to limit the power of the Commission to authorize the issuance of securities "in connection with the or-

⁷⁸ *Ibid.*, Art. 23, Secs. 381 and 392.

⁷⁹ The fifth purpose was added by the *Laws of Md.*, 1914, Ch. 445, and appears as Secs. 382 and 393 of Art. 23. The third purpose was added by Ch. 474 of the *Laws of Md.*, 1920, and the fourth purpose by Ch. 408 of the *Laws of Md.*, 1918. Only the first two purposes, therefore, appeared in the original enactment.

⁸⁰ *An. Code, P. G. L.*, 1924, Art. 23, Secs. 381 and 392.

ganization of a new corporation by any purchaser or purchasers of the franchise or property of any corporation subject to the provisions of the Public Service Commission Law sold under any judicial proceeding or mortgage or deed of trust" so as to protect in such manner as may appear necessary to the Public Service Commission, the interest of security holders in the old corporation whose franchise was sold. This section of the law is broad enough to permit the Public Service Commission to authorize the capitalization of franchises (except the franchise to be a corporation) and other tangible or intangible assets purchased in judicial sales under mortgage or deed of trust, if such capitalization is necessary to procure the capital required by the purchasing corporation.⁸¹

The nature of the jurisdiction of the Public Service Commission in regard to the issuance of securities by common carriers engaged in interstate commerce, and the effect of the Transportation Act of 1920 on this jurisdiction, was determined in two cases before the Court of Appeals.

In the first of these cases, in 1913,⁸² the court took the very interesting view that the Public Service Commission was a sort of blue-sky committee. This implied that powers were vested in the Commission to insure full disclosure of all the facts surrounding the issuance of securities, and thereby to protect the investing public. But the court also recognized the practical limitation existing on the power of the Commission to investigate and follow up the expenditure of the funds. "It is proper to require the Baltimore and Ohio Railroad Company to file an application or report with the Public Service Commission, stating with reasonable fullness such facts as may be requisite to enable the Commission and those legitimately interested therein to ascertain whether any proposed issue or issues of bonds or certificates of indebtedness is or are in fact *bona fide* and for value. But beyond that it is not subject to the jurisdiction of said Commission as to the financing of the system known as the Baltimore and Ohio Railroad Company, extending through a number of states, either in respect to determining the aggregate amount of capital stock, bonded indebtedness, the prices at which its bonds or certificates of indebtedness, shall be sold, or where or how the moneys realized from the sale thereof shall be expended."

⁸¹ *Ibid.*, Art. 23, Sec. 415.

⁸² *P. S. C. v. B. & O. R. R. Co.*, 121 Md. 179 (1913).

The very meager and formal jurisdiction with regard to interstate carriers allowed the Commission by the Baltimore and Ohio Railroad Company case was later declared suspended by the Transportation Act of 1920 in 1924.⁸³ Under the terms of subsection 7 of section 20a of the Transportation act, permission for the issuance of securities by common carriers in interstate commerce had to be obtained from the Interstate Commerce commission and any authorization of the Public Service Commission would, therefore, be nugatory.

The change by a public utility of its par value stock into no-par value stock, without obtaining new capital, is a matter of internal management and does not require the consent of the Public Service Commission.⁸⁴

PERMISSION TO CONSTRUCT EQUIPMENT AND EXTEND SERVICE AND FOR THE ACQUISITION OF CAPITAL STOCK IN OTHER UTILITIES

The second important administrative power vested in the Commission is its authority to permit the beginning of construction by a public utility, the extension of equipment and service, or the acquisition of securities of one public utility by another. Public utilities are not permitted to begin construction, or exercise any right or privilege under any franchise,⁸⁵ without first obtaining permission of the Public Service Commission. This provision also applies to the extension of equipment and service already in operation. An exception is made, however, in favor of gas corporations and electric corporations who extend their equipment and service within territory in which they are lawfully operating when such extension is necessary or desirable.

The acquisition of the capital stock of one public utility or common carrier by another also requires permission from the Commission.⁸⁶ How effective or ineffective this power really

⁸³ *P. S. C. v. N. C. Rwy. Co.*, 146 Md. 580 (1924).

⁸⁴ *P. S. C. v. Cons. Gas El. Lt. & Pr. Co.*, 148 Md. 90 (1925).

⁸⁵ What the term "franchise" means in this connection was settled by *Kelly v. Cons. Gas, El. Lt. and Pr. Co.*, 153 Md. 523 (1927). The term refers to the permission specifically granted by the political authority in the territory to be served, and not to the general permissive grants in the corporation's charter. Judge Offut wrote a dissenting opinion in this case, and contended that the franchise granted to a company in its charter is single and complete, and does not depend upon further permissive grants from an indeterminate number of political units.

⁸⁶ *An. Code, P. G. L.* 1924, *Sup.* 1929, Art. 23, Secs. 379 and 390. *City & Suburban R. R. Co. v. W. W. and G. R. R. Co.* 122 Md. 655 (1914). *Realty Improvement Co. v. Cons. Gas E. L. & P. Co.* 156 Md. 581 (1929).

is was determined in a case which was carried through the Court of Appeals. The Commission refused permission for the sale of the capital stock of a number of small public utilities on the ground that such sale was not clearly shown to be to the public interest. Although the price agreed upon was far in excess of any fair value of the properties, the Commission did not decide on that ground, but, merely, for the reason that the advantages from the transaction accrued solely to the buyers and the sellers. The court held that such an order was beyond the powers of the Commission, and that the power to issue such an order could not constitutionally be conferred upon it.⁸⁷

ABANDONMENT AND TRANSFER OF FRANCHISES

Another administrative power vested in the Commission requires that an authorization by it precede the abandonment or discontinuance by a public utility of its rights and franchises,⁸⁸ and also of the transfer of the franchise of one public utility to another by sale, lease, or assignment.⁸⁹ The Commission may require of the public utility that it show that the extension of service, the abandonment of service or the transfer applied for are in the public interest.⁹⁰ An order of the Commission, need not state public necessity as its basis in order to be valid. "The test of the validity of the order is not a statement of its reason for the order, but the unreasonableness of the order."⁹¹

The Court of Appeals of Maryland has also held that unless a public utility is specifically required by a mandatory provision in its charter to continue the operation of its plant, the power of the Commission to authorize the abandonment of the service is not limited by the mere fact that the public utility has already undertaken the exercise of its franchise.⁹² Yet, where a municipality has acquired an electric plant under authority of the legislature, it may not abandon

⁸⁷ *Electric Public Utilities v. P. S. C.*, 154 Md. 445 (1928).

⁸⁸ *An. Code*, P. G. L. 1924, *Sup.* 1929, Art. 23, Secs. 380 and 391.

⁸⁹ *Ibid.*, Art. 23, Secs. 379 and *An. Code*, P. G. L. 1924, Art. 23, Sec. 394.

⁹⁰ *Ibid.*, *Sup.* 1929, Art. 23, Sec. 380 A.

⁹¹ *Byron v. P. S. C.*, 153 Md. 464 (1927).

⁹² *Benson v. P. S. C.*, 141 Md. 398 (1922).

it, merely upon permission granted by the Public Service Commission, without a new act of the legislature, permitting it to do so.⁹³

CHANGES IN TARIFF SCHEDULES

The law provides that changes in tariff schedules may be made only upon notice of thirty days to the Commission, and the publication of notice of the change, for that period of time. The Commission may, however, waive this requirement of thirty days and order the change to take effect in less than the interval specified.⁹⁴

(3) VISITORIAL POWERS OF THE COMMISSION

The visitorial powers of the Commission are the next of the important grants of power to be discussed. The Public Service Commission is granted general supervisory powers over all persons and corporations subject to its jurisdiction. It may examine them and keep itself informed as to their general condition, their franchises, their capitalization, the service supplied by them, and the methods by which they conduct their business.⁹⁵ In order to carry out these powers, the Commission is authorized to have access to the records and accounts of the public utilities subject to its supervision and has authority to examine them.⁹⁶ The Commission is also permitted to enter the premises and inspect the plant and equipment of the public utilities.⁹⁷

UNIFORM ACCOUNTING SYSTEMS AND ANNUAL REPORTS

The Commission may prescribe uniform systems of accounts for the various classes of public utilities over which it has jurisdiction. Once these systems of account keeping have been adopted by the Commission and prescribed for the particular classes of public utilities concerned, it is unlawful for the utility to keep accounts other than in the manner prescribed.⁹⁸

An activity, which is closely related to the power to prescribe uniform methods of accounting, is the provision concerning annual reports. The sections covering uniform accounting

⁹³ *P. S. C. v. Hancock*, 151 Md. 670 (1927).

⁹⁴ *An. Code, P. G. L.*, 1924, Art. 23, Sec. 364.

⁹⁵ *Ibid.*, Art. 23, Secs. 362, 370, 399.

⁹⁶ *Ibid.*, Art. 23, Secs. 378, 388, 399.

⁹⁷ *Ibid.*, Art. 23, Secs. 388, 399, 412.

⁹⁸ *Ibid.*, Art. 23, Secs. 378, 388, 399.

systems and those covering annual reports require that, as nearly as possible, the regulations of the Commission in regard to common carriers conform to the regulations of the Interstate Commerce Commission. In making changes in the "method or form of keeping the accounts of such corporations, the Commission shall give to them at least six months' notice before the expiration of any fiscal year of any such changes or additions."⁹⁹ In the annual reports, the Commission may require information concerning rates charged by the public utility, the amount of authorized capital stock and the amount of stock issued and outstanding, the amount of its outstanding bonded indebtedness, the receipts and expenditures, dividends and interest paid, salaries and wages paid, a description of properties and franchises, and other facts which may be called for by the Commission.¹⁰⁰

TARIFF SCHEDULES, SUSPENSION OF RATES, ETC.

Public utilities are required to keep on file, with the Commission, schedules of rates, fares, or charges for their services. These tariff schedules must set forth fully the nature of the services rendered and all rules prescribed by the public utility.¹⁰¹ The provisions in regard to tariff schedules are also applicable to "mileage, excursion, school commutation, commutation passenger tickets, half-fare tickets, or joint interchangeable mileage tickets" issued by common carriers.¹⁰² The Commission, either upon its own motion or upon complaint, may suspend any new provisions in tariff schedules which have been filed with it. Such suspension must be accompanied, however, by a notice to the public service corporations involved. This suspension may not extend for more than one hundred and twenty days beyond the date at which the provision suspended would otherwise go into effect. The Commission may hold hearings on the lawfulness of the suspended provision in the meantime, and, if such hearings cannot be concluded within the one hundred and twenty days prescribed, the Commission may order a further extension of thirty days. If the hearings are

⁹⁹ *Ibid.*, Art. 23, Sec. 371.

¹⁰⁰ *Ibid.*, Art. 23, Secs. 371, 388, 399.

¹⁰¹ *Ibid.*, Art. 23, Sec. 364.

¹⁰² *Ibid.*, Art. 23, Sec. 365. The specific question as to the power of states to regulate commutation rates between points located within the state was decided in favor of the state. *Penna. R. R. Co. v. P. S. C.*, 126 Md. 59; also 245 U. S. 6.

still not concluded at the end of the thirty days' period, the new provisions, nevertheless, go into effect. If the schedules involve a proposed increase in rates, the Commission may require the public utility to keep account of the amounts received by it, and, if the final order is against the new increase in rates by the public utility, any amounts unlawfully collected have to be returned with interest to the persons by whom they were paid. The burden of proof of showing that any new provisions in tariff schedules are just and reasonable is upon the proponents of the change.¹⁰³

The Public Service Commission is further granted the power to authorize emergency increase in rates as a temporary measure, if such an increase is required to preserve the property or efficient service of any public utility.¹⁰⁴ Whenever the Commission has satisfied itself, after hearing, either upon complaint or upon its own motion, that the rates charged by any public utilities are unjust or unreasonable or that the services rendered by them are unsafe, inadequate, or unreasonable, it may fix and prescribe by its order the proper rates, either maximum or minimum, to be charged, for the services to be rendered. A copy of the order must be served upon the officers of the public utility, and thereafter it is binding and must be observed.¹⁰⁵ The Commission may require common carriers whose lines "form a continuous line of transportation, or which could be made to do so by the construction and maintenance of switch connections, to establish through routes and joint rates."¹⁰⁶

REQUIRING IMPROVEMENTS

A very important authority lodged in the Commission is the power to require common carriers, railroads, or street railroads to make repairs, improvements, or changes in their equipment, or facilities in order to promote the security, or convenience of the public, or their employees.¹⁰⁷

The somewhat ambiguous grant of power with respect to requiring improvements by public utilities has given rise to a very interesting line of cases. They show in an important way how the interpretation by the courts shapes the course of regulation. The cases to be considered as a single development deal

¹⁰³ *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 23, Sec. 364 A.

¹⁰⁴ *Ibid.*, Art. 23, Sec. 364 B.

¹⁰⁵ *An. Code, P. G. L.*, 1924 and *Sup.* 1929, Art. 23, Secs. 373, 373 A, 377.

¹⁰⁶ *Ibid.*, Art. 23, Sec. 373.

¹⁰⁷ *Id.*

with a diverse subject matter, and were disposed of on diverse grounds. This group, nevertheless, represents a series of attempts by the Commission to meet the requirements of "public convenience."

Early in its career the Commission ordered the Philadelphia, Baltimore and Washington Railroad Company to reinstate service on a branch line which had been abandoned for almost twenty years. The charter of the railroad which referred to the branch line was interpreted by the court as being "permissive" and not "mandatory." The court did not consider the question of how renumerative the branch might prove, but based its conclusion on the fact that abandonment had occurred before the adoption of the Public Service Commission Law and that the Commission was, therefore, without jurisdiction.¹⁰⁸

Another case decided the same year, also, touched upon this problem. Upon a petition filed by the Brooklyn Improvement Association, the Commission had ordered the Brooklyn and Curtis Bay Light and Water Company to extend its services to the residents of Brooklyn. Although the briefs centered on the legal power of the Commission to order this extension, the court decided the case on the facts. It found that the uncontradicted testimony in the court below indicated that it was impossible for the company to earn a fair return on the additional capital required for the extension. It also found that the conclusions of the Commission on this point of fact were fallacious. The court, therefore, decided that the extension could not be ordered, inasmuch as it was not clearly shown that the probable revenue from the new territory would be sufficient to provide for the operating expenses and dividends of the venture.¹⁰⁹

When the Commission attempted to prescribe the methods for handling local and express trains coming into Baltimore City, and required that whenever express trains were late they should be side-tracked so as not to delay commuters the order was held to be invalid. The powers conferred upon the Commission must be exercised reasonably, and the final judge of the reasonableness of the order is the court. An order such as this was regarded as depriving "the railroad company of all discretion in regard to the operation of its trains at the time of such delays . . . and to the extent that the company is

¹⁰⁸ P. S. C. v. P. B. & W. R. R. Co., 122 Md. 438 (1914).

¹⁰⁹ P. S. C. v. Brooklyn El. Water Co., 122 Md. 612 (1914).

deprived of such discretion the Commission has by its general order attempted to operate the appellant's road, . . . and it has exceeded the powers conferred upon it by statute."¹¹⁰

These cases were all tried in the early years of the existence of the Commission and established important precedents with regard to the exercise of its power. Another case, decided one year after the commuter's case overruled an order of the Commission which would have required the United Railways and Electric Company to extend its car lines about seven miles beyond its termini. There were long and complex charter provisions involved, but the testimony as to the profitableness of the extension was conflicting. No doubt existed as to the desirability of the service, however, on the ground of public convenience. The court ruled the order was beyond the jurisdiction of the Commission, and that the question involved concerned the policy of the corporation, which was to be determined at the discretion of its directors, in the honest exercise of their judgment.¹¹¹ The court went further in its statement of principles in this case than it had in any of those preceding.

In another instance, in which a railroad company found it necessary to rebuild a part of its tracks the Commission ordered a grade of 0.38 per cent instead of 0.35 per cent as proposed by the company. This increased grade was designed to satisfy the protests of the citizens of Port Deposit, who contended that their town would be injured materially by the lower grade, as this would necessitate placing tracks above the streets. The decision turned on the determination of the meaning of the term "public" as used in the Public Service Commission Law when it provided that facilities be designed to meet the "security or convenience of the public."¹¹² The railroad argued that its policy was to maintain low grade lines, because such a system meant cheaper operation, and, consequently, cheaper rates. A change in the railroad grade might affect the entire rate structure of the railroad. Here was a conflict between two publics; on the one hand, the railroad, and the general public who used its services, on the other hand, the residents of Port Deposit. The court overruled the Commission, and held that the law referred to the wider and not to the narrower public,

¹¹⁰ *N. C. Rwy. Co. v. P. S. C.*, 124 Md. 141 at p. 152 (1914).

¹¹¹ *P. S. C. v. United Rwy. and El. Co.* 126 Md. 478 (1915).

¹¹² *An. Code, P. G. L.*, 1924, Art. 23, Sec. 373.

and that the Commission, therefore, could not refuse to the railroad permission to construct its road in such a manner as to insure the best service at the least expense.¹¹³

One further case, which should be considered together with this line of cases, dealt with the order of the Commission which required the Sun Cab Company to carry public liability insurance. There was no specific statutory provision which authorized such an order, but the Commission contended that such a practice would tend to the public safety, and was therefore within the scope of its regulatory power. The court vacated the order, and ruled that in the absence of specific statutory authority on this subject, none could be implied.¹¹⁴

SUNDRY PROVISIONS WITH REGARD TO RATES

In its jurisdiction over the rates of common carriers, the Commission may order the establishment of rates for "mileage, excursion, school commutation or commutation passenger tickets, or joint interchangeable mileage tickets," if it considers such tickets to be desirable and advantageous.¹¹⁵ The Commission may also "require common carriers to give receipts for containers of dairy products as of other property or goods received for transportation within this state, whenever said containers are intended to be returned." The common carriers are not permitted to charge more for the services performed, because the receipt is issued than if no receipt were issued. The form of the receipt may be prescribed by the Commission, and the liability of the carrier to the lawful holder of the receipt for any loss or damage to the containers is absolute.¹¹⁶

FULL CREW LAW

If the Commission finds, after hearing, that a railroad intends to operate, or is operating, a freight train, or trains in the State of Maryland with a crew insufficient for safe and efficient operation, it may require the employment of a number of men such as it deems requisite for safe and efficient operation.¹¹⁷

¹¹³ *P. S. C. v. P. B. & W. R. R. Co.* 155 Md. 104 (1928).

¹¹⁴ *P. S. C. v. Sun Cab Co.*, 160 Md. 476 (1931). The specific statutory authority was later granted. *Laws of Md.*, 1931, Ch. 485.

¹¹⁵ *An. Code, P. G. L.*, 1924, Art. 23, Sec. 374.

¹¹⁶ *Ibid.*, Art. 23, Sec. 375. The section in the code was Ch. 668 of the *Laws of Md.*, 1914. Substantially the same subject matter was also enacted and signed that year as Ch. 191.

¹¹⁷ *An. Code, P. G. L.*, 1924, Art. 23, Sec. 376.

INTERSTATE TRAFFIC

The powers of the Commission do not extend to interstate traffic or commerce. This limitation applies to all matters within the exclusive jurisdiction of the Federal Government, and to all matters within the exercise of the concurrent power of the Federal Government, which it has in fact regulated, to the exclusion of the power of the States. Its only power, if it believes the rates or practices of common carriers engaged in interstate commerce to be unlawful, is to investigate such practices and petition the Interstate Commerce Commission for relief.¹¹⁸

PROVISIONS APPLICABLE TO GAS AND ELECTRIC CORPORATIONS

The sections discussed above are obviously pertinent principally to common carriers and electric railways. Other provisions contained in the law are of special application to gas corporations and electric corporations. Thus, the Commission may establish reasonable standards for measuring the purity, illuminating power, and heating power of gas, and "the efficiency of the electric supply system, of the current supplied, and of the lamps furnished by the persons or electrical corporations generating and selling electric current." The Commission may require that the gas and electric supply conform to the requirements set by it, according to the standards prescribed.¹¹⁹ All meters used for measuring gas flow and electrical current must be examined by inspectors appointed by the Commission, who are to mark these meters as correct.¹²⁰ If a consumer files complaint concerning the accuracy of a gas or of an electric meter, the Commission is to inspect the meter about which the complaint has been filed. Whenever such a meter is inaccurate, to the prejudice of the consumer, to the extent of two per cent, if a gas meter, and four per cent, if an electric meter, it is to be removed and the expense of inspection borne by the public utility. If the meter is accurate, the fee for inspection must be paid by the consumer.¹²¹

¹¹⁸ *Ibid.*, Art. 23, Sec. 384, and *Sup.* 1929, Art. 23, Sec. 416.

¹¹⁹ *Ibid.*, Art. 23, Sec. 388.

¹²⁰ *Id.*

¹²¹ *Ibid.*, Art. 23, Sec. 389.

REPORT OF ACCIDENTS

All accidents, resulting in loss of life or injury to persons, or property, must be reported to the Commission, within thirty days after the occurrence of the accident. This notice of accident is not admissible as evidence in suits against the public utility reporting.¹²²

VALUATIONS

The last visitorial power of the Commission to be considered, and one of its most important powers, is that of making valuations of the property of public utilities. In making valuations the Commission may employ the services of experts. The public utilities are also required to furnish every aid to the Commission in the preparation of these valuations, such as maps, engineer's reports, contracts, and other records and documents. The valuations are to be so made as not to disturb the value of the bonds of the utilities issued prior to April 5, 1910. After the original valuation, the Commission is to keep itself informed of the improvements and extensions of the public utilities, and may revise its valuation from time to time. The results of the valuations are to be reported to the legislature at each regular session and must show the valuation of the property of the corporation as a whole and also the value of the property in each county and municipality within the state. The public utilities must be notified of these valuations before they become final, and time for filing protest allowed. If no protest is filed, the valuation becomes final. If protest is filed, the contest must be set down for hearing, and the entire subject matter re-examined. "All final valuations by the Commission shall be *prima facie* evidence of the value of the said property in proceedings" under the Public Service Commission Law.¹²³

(4) GENERAL

In considering the foregoing enumeration of the powers of the Commission, it may be repeated that they are not separate and distinct grants which the Commission may be called upon to exercise singly in individual cases. A great many of them are generally involved in a single case coming before the Commission. Thus, the power to hear complaints is closely related

¹²² *Ibid.*, Art. 23, Sec. 372.

¹²³ *Ibid.*, Art. 23, Secs. 385, 388, and 399.

to the powers to investigate the affairs of the utility, to examine its books, and to make valuations of the property. Petitions concerning the authorization for the construction of equipment and the extension of service are frequently joined in a single application together with requests for permission to issue securities. In brief, the Commission may bring all its legal resources to bear in dealing with any one of the problems which come before it.

It is also advisable to point out that the term public utility, or simply utility, has been used in this treatise as a generic term to include all of the properties, services, persons, or corporations subject to the regulation of the Public Service Commission. This usage is adopted for the sake of clarity and saves detailed enumeration of railroads, street railways, common carriers, gas corporations, electric corporations, and so forth, which would otherwise be necessary. The restriction of the usage of the term public utility, to gas corporations, electric corporations, and others in contradistinction to common carriers would not prove serviceable, inasmuch, as all of the provisions of the law govern all the subjects of the Public Service Commission, insofar as they are applicable.¹²⁴ Some of the provisions do apply only to common carriers, others only to public utilities which use meters, but these distinctions are either obvious, or have been pointed out.

IV. PROCEDURE BEFORE THE COMMISSION

The Commission has authority to set up rules to govern practice and procedure in all matters coming before it.¹²⁵ The rules now used by the Commission are those adopted August 5, 1910, and the subsequent amendments to those rules.¹²⁶ The rules are published by the Commission from time to time, and are easily obtainable.¹²⁷ In addition to the rules of the Commission, the law also makes important provision concerning practice and procedure.

Subpoenas to witnesses may be issued by the Commission or its Secretary. If a witness refuse to attend, to be sworn, to testify, to answer pertinent questions, or to produce books or records when so ordered, the offense constitutes a misdemeanor

¹²⁴ *Ibid.*, Art. 23, Secs. 398, 401, and 402.

¹²⁵ *Ibid.*, Art. 23, Sec. 358.

¹²⁶ *P. S. C. Md.*, I, pp. 180, ff.

¹²⁷ The latest edition appeared in 1927.

and he may be criminally prosecuted. The Commission, however, may ask the judges of any of the courts of the state for a rule, returnable in no less than two, nor more than five days, to require the recalcitrant witness to show cause why he should not be committed to jail for his refusal. If, after hearing, the judge finds no adequate reason for excusing the witness from testifying before the Commission, he may commit him to jail until the required act is performed, or until he is "discharged" according to law.

Witnesses in hearings before the Commission are allowed fees in accordance with the rates prevailing in the state courts in the place where the hearing is held.

Public officers must furnish the Commission, without charge, certified copies of papers, or parts of papers in their files.¹²⁸

The Commissioners have the authority to administer oaths in all parts of the state in all inquiries before them. They may require the production of the original books and records of the public utilities, or of sworn copies.¹²⁹ Witnesses before the Commission are not exempt from answering questions or producing documents on the ground that such testimony may incriminate them. No criminal proceedings are, however, to be prosecuted on the basis of any testimony produced before the Commission, except for perjury, if committed. This immunity from prosecution does not apply to corporations.¹³⁰

Persons or corporations, who are complained of, or who are being investigated are entitled to notice of the complaint or investigation.¹³¹

By Chapter 196 of the Acts of 1927 the Commission was given authority "to make joint investigations, hold joint hearings, and issue joint or concurrent orders in conjunction or concurrence with any official board or commission of any state or of the United States."¹³²

The Commission is also authorized to hold hearings concerning proposed legislation relating to any public utility subject to its authority, if requested to do so by the Governor, or by

¹²⁸ *An. Code, P. G. L.*, 1924, Art. 23, Sec. 357.

¹²⁹ *Ibid.*, Art. 23, Secs. 362, 370, and 388.

¹³⁰ *Ibid.*, Art. 23, Sec. 358.

¹³¹ *Ibid.*, Art. 23, Sec. 396.

¹³² *Ibid.*, *Sup.* 1929, Art. 23, Sec. 349 A.

the legislature. It may also make recommendations for legislation in respect to any matters within its jurisdiction, or the scope of its interest.¹³³

Every matter coming before the Commission must be disposed of by a formal order.¹³⁴ Those orders must be delivered to all persons affected by them, and they in turn must notify the Commission of the receipt of the order. Orders take effect from the day specified by the Commission, and continue in force for a particular period, if any is specified, or until they are modified or set aside by the Commission, or by some court of competent jurisdiction.¹³⁵

After an order has been issued by the Commission, any party in interest may apply for a rehearing, and such rehearing may be granted, or refused according to the judgment of the Commission. The application for rehearing does not, however, stay the operation of the order appealed from, except insofar as the Commission may allow. After rehearing the Commission may abrogate, suspend, or modify its original order.¹³⁶

In a case in which an appeal was taken on an interim order of the Commission, and a final order was issued to supersede the interim order before the disposition of the appeal, the appeal was then dismissed.¹³⁷

V. PROCEDURE BEFORE THE COURTS

Proceedings in the courts fall under two general classes: those in which actions are brought to vacate or modify orders of the Commission, and those brought either by the Commission or against the Commission to enjoin violations of the law, or the enforcement of the orders of the Commission.

Any person in interest may proceed in the courts of the State to have any order of the Commission vacated, or set aside,¹³⁸ provided that such proceedings are commenced within at least sixty days after the rendition of the order by the Commission. The Commission is required to file its answer within twenty days of the service of the complaint upon it, and, thereupon, issue is joined and the case stands ready for trial upon

¹³³ *An. Code, P. G. L. 1924, Art. 23, Sec. 370.*

¹³⁴ *Ibid.*, Art. 23, Sec. 372.

¹³⁵ *Ibid.*, *Sup. 1929, Art. 23, Sec. 359. P. S. C. v. Kensington Rwy. Co.*, 131 Md. 649 (1917).

¹³⁶ *An. Code, P. G. L., 1924, Sup. 1929, Art. 23, Sec. 359.*

¹³⁷ *P. S. C. v. C. & P. Tel. Co.*, 147 Md. 279 (1925).

¹³⁸ *An. Code, P. G. L., 1924, and Sup. 1929, Art. 23, Secs. 359 and 404.*

fifteen days' notice. No injunction to set aside an order of the Commission may be issued by any judge without "notice to the Commission and after hearing."¹³⁹

Whenever the Commission is of the opinion that some public utility is acting in violation of the law, or of an order of the Commission, it may direct the General Counsel to institute proceedings in court to restrain such violation by either injunction, or mandamus. The time set for answering the petition for mandamus, or injunction is not to exceed twenty days. The court is then to proceed on petition and answer to inquire into the facts of the case and to give judgment accordingly by either dismissing the proceedings or giving appropriate relief.¹⁴⁰

The law requires that preference on the court calendars be given to all actions to which the Public Service Commission may be a party, whether in actions to set aside an order or to obtain an injunction, or in cases in which the General Counsel or People's Counsel may have been permitted to intervene.¹⁴¹

Wherever actions are taken in the courts involving an order of the Commission, a transcript of all the papers in the case, including the evidence, duly certified by the Secretary, is to be filed with the court. Parties to the case, however, may stipulate for the omission of any of these papers, or parts of the evidence.¹⁴² In cases before the court the burden of proof is upon the party adverse to the Commission, or upon the party who seeks to set aside an order of the Commission.¹⁴³

The same immunity which is granted to witnesses, in hearings, before the Commission also extends to protect them from criminal prosecution for testimony given in court hearings.¹⁴⁴ The rules of practice and evidence to be followed in these cases are the same as for civil cases in general, except where special provision has been made.¹⁴⁵

If, at the time of any case before the courts, the evidence adduced by either party differs from that offered before the Commission, a transcript of the evidence is forwarded to the Commission, and it is given fifteen days within which to rescind, modify, or alter its orders in accordance with the new evidence. If the original order is rescinded the action is dismissed, if

¹³⁹ *An. Code, P. G. L. 1924, Art. 23, Sec. 404.*

¹⁴⁰ *Ibid.*, Art. 23, Secs. 383 and 397.

¹⁴¹ *Ibid.*, and *Sup. 1929, Art. 23, Secs. 353 and 404.*

¹⁴² *An. Code, P. G. L. 1924, Art. 23, Sec. 406.*

¹⁴³ *Ibid.*, Art. 23, Sec. 408.

¹⁴⁴ *Ibid.*, Art. 23, Sec. 410.

¹⁴⁵ *Ibid.*, Art. 23, Sec. 409.

altered the revised order takes the place of the original, and if no change is made judgment is rendered by the court on the original order.¹⁴⁶

After final judgment, appeal to the Court of Appeals must be taken within twenty days. The action must then be placed on the Docket of the Court of Appeals for the pending term.¹⁴⁷

VI. PENALTIES

There has already been described, in the discussion of the powers of the Commission with respect to public motor vehicles, the penalties for failure to comply with the law. Other penalties are provided for failure to file the annual reports required by the Commission, or for failure to conform to the Public Service Commission Law, or to the orders of the Commission.

Any public utility which fails to file the annual report required, or files an incorrect one, makes itself liable to a penalty of one hundred dollars "and an additional penalty of ten dollars for each day after the prescribed time for which it shall neglect to file or correct" the report. The Commission has authority to extend the required time within which the report must be filed. Any penalties recovered must be paid to the State.¹⁴⁸

"Any common carrier, railroad corporation, or street railroad corporation" which violates any provision of the law, or an order of the Commission which is still in force, may forfeit the sum of five thousand dollars for each and every offense. Other public utilities may forfeit one thousand dollars for similar offenses. Any agents of a public utility or common carrier who help, or aid, in any such violation are guilty of misdemeanors. Action to recover these forfeitures may be instituted in any of the courts of competent jurisdiction in the state. The forfeiture is not to be enforced, however, if the defendant was, at the time of the offense, prosecuting a suit to set aside the order of the Commission which he is alleged to have violated.¹⁴⁹ The fines recovered are divided between the State of Maryland and the City of Baltimore in the ratio of three to one.¹⁵⁰

¹⁴⁶ *Ibid.*, Art. 23, Sec. 405.

¹⁴⁷ *Ibid.*, Art. 23, Sec. 407.

¹⁴⁸ *Ibid.*, Art. 23, Secs. 388 and 399.

¹⁴⁹ *Ibid.*, Art. 23, Secs. 383 and 397.

¹⁵⁰ *Id.* The division of penalties between the State and Baltimore City is provided in the original act and has never been changed. The reason for the original act was the share of Baltimore in the expense of the Commission. As a practical matter, the point is not important because penalties are not enforced.

CHAPTER III

PROPOSED AMENDMENTS TO THE LAW WHICH HAVE FAILED OF ENACTMENT

Since the passage of the Public Service Commission Law in 1910, there have been about ninety bills concerning the activities of the Commission which have been introduced into the various general assemblies, and which have failed of passage. Some of these bills were sponsored by the Commission, and were strongly urged in its annual reports. A number of the bills were introduced repeatedly in successive sessions, and, in some instances, were passed after a number of failures. Occasionally, the same bill was introduced simultaneously in both the Senate and the House of Delegates, in order to facilitate its passage.

These bills which have failed of passage are interesting as a part of the history of the Maryland Commission. They indicate the paths which the law might have taken or may take in the future.¹ They illustrate, in many instances, individual or group animosities toward the Commission, or toward the public utilities. They also bring to light, in striking fashion, the difficulties which the Commission itself has encountered in its efforts to obtain the passage of desired legislation. Even though, the Commission has never been particularly aggressive in asking for legislative changes, the modest requests, which it has made, have not been accorded prompt and effective attention. In many cases the Commission succeeded only after constant repetition, and in other cases even such efforts were fruitless.

The timidity of the Commission in requesting legislative changes is striking. As was shown in the preceding chapter, orders of the Commission have been set aside because the Court of Appeals held that the Commission had exceeded its legal limitations in prescribing improvements, or the extension of service by the utilities. These decisions raised as an issue a

¹ In *Law and Opinion in England*, Dicey pointed out that legislative trends are often as traceable in bills which fail of passage as in those which become statutes. (2d Ed. p. 295).

basic problem of regulation. One might have expected that the Commission would have accepted the challenge, and advocate legislation which would definitely grant to it the powers which it had attempted to exercise, but failed to do. Such legislation was seldom sponsored. The best illustrations of the cases, which raised this issue, are those which involved the order to the United Railways Company to extend its tracks into new territory, and the order to the Brooklyn and Curtis Bay Light and Water Company to extend its services to the residents of Curtis Bay.^{1a}

The following classification has been adopted for presenting the proposed legislation.

- I. The Organization of the Public Service Commission of Maryland.
- II. The Persons Subject to the Jurisdiction of the Commission and the Duties Imposed upon Them.
- III. The Jurisdiction of the Commission.
- IV. Miscellaneous.

I. THE ORGANIZATION OF THE PUBLIC SERVICE COMMISSION

At the very beginning of the discussion of the bills which purported to deal with the Public Service Commission should be mentioned the three separate attempts to abolish the Commission. In 1918, 1920 and 1927 bills were introduced to repeal the Public Service Commission Law and all amendments to it.^{1b} Other attacks were also made on the Commission but these were less drastic in their purposes. One bill, introduced in 1918, provided that the annual appropriation to the Commission be limited to twenty thousand dollars (\$20,000), that the offices of General Counsel, Secretary, Chief Engineer, Transportation Expert, and Rate Clerk be abolished and that the employees of the Commission be limited to five stenographers and three general clerks. Inspectors and engineers were to be employed only as required. The salaries of the Commissioners

^{1a} This position of the Commission was reversed, when the courts set aside the orders of the Commission which required liability insurance of the Sun Taxicab Company. In that instance, the Commission recommended legislation, and succeeded in having the power of requiring liability insurance for certain taxicabs entrusted to it.

^{1b} *House of Delegates*, No. 302, 1918; *Ibid.*, No. 222, 1920; and *Senate of Md.*, No. 203, 1927.

were to be reduced to two thousand five hundred dollars (\$2,500) each.²

There have also been three attempts to require the advice and consent of the Maryland Senate to the appointments to the Commission made by the Governor.³ In contrast to those attempts, bills have been introduced which call for the election, in place of the appointment, of the members of the Commission.⁴ There was, also, an echo of one of the bills, which had been introduced in the General Assembly of 1910 in a proposed amendment which provided that not more than two of the members of the Commission were to be of the same political party.⁵ There was an interesting proposal that one of the Commissioners should be an engineer.⁶

The office of General Counsel was abolished in 1924, and re-established in 1927, but the first attempt to abolish the office was made as early as 1918, when the proposal that this position be replaced by that of a People's Counsel was made.⁷ The following session another bill was introduced to provide for the election of a People's Counsel to replace the Assistant to the General Counsel.⁸ The office of People's Counsel was finally established in 1922 for the purpose of taking over the duties of the Assistant to the General Counsel.⁹ This change was not a very radical one, for no new duties were created by it. Even as early as 1913, the Assistant to the General Counsel was referred to as the People's Counsel.¹⁰

A bill, which received the sponsorship of the members of the Public Service Commission in 1922, proposed to tax the public utilities for the support of the Commission on the basis of their gross receipts.¹¹ It was felt, no doubt, that this method would furnish a more generous appropriation than that granted by the State.

² *Ibid.*, No. 129, 1918.

³ *Ibid.*, No. 228, 1924; *Ibid.*, No. 183, 1927; *Ibid.*, No. 121, 1929.

⁴ *House of Delegates*, No. 75, 1922; *Ibid.*, No. 434, 1924; *Ibid.*, No. 153, 1929.

⁵ *Senate of Md.*, No. 77, 1929.

⁶ *House of Delegates*, No. 28, 1916.

⁷ *Senate of Md.*, No. 522, 1918.

⁸ *House of Delegates*, No. 341, 1920.

⁹ *Laws of Md.*, 1922, Ch. 29, Sec. XIII.

¹⁰ *P. S. C. Md.*, IV, p. 19.

¹¹ *Senate of Md.*, No. 59, 1922.

In 1927 a bill was introduced to require a minimum salary of two thousand dollars (\$2,000) for utility inspectors employed by the Commission.^{11a}

II. THE PERSONS SUBJECT TO THE JURISDICTION OF THE COMMISSION AND THE DUTIES IMPOSED UPON THEM

A number of bills have been introduced, from time to time, which proposed to enlarge the number of services and types of business coming under the jurisdiction of the Commission. In 1912, immediately before the Democratic Convention of that year came to Baltimore, it was proposed to grant the Commission jurisdiction over hotel rates during national conventions.¹² Amendments were also proposed which would have brought fidelity and surety companies,¹³ and public cemeteries under the regulation of the Commission.¹⁴ Other bills were designed to give jurisdiction to the Commission to regulate rates for water furnished by municipalities,¹⁵ to prescribe rules for public taxi stands,¹⁶ and to issue permits to motor vehicles engaged in conveying freight and passengers for the public, other than in accordance with fixed schedules.¹⁷

The most important of the bills which fall under this heading are the proposals to give the Commission jurisdiction over holding companies. This legislation has received the sponsorship of the Commission, and, although introduced in both 1929 and 1931, has still failed of enactment. The powers conferred upon the Commission in the bills which have been introduced up to this time have not been particularly extensive. The books of holding companies and their other records would be made subject to examination by the Commission, and they would be required to furnish such annual statements as might, from time to time, be prescribed. If the holding company were not a Maryland corporation, nor a resident of the state, it would have to designate a resident agent who would have authority to be served with all notices and process in any litigation. If

^{11a} *House of Delegates*, No. 370, 1927.

¹² *Ibid.*, No. 452, 1912.

¹³ *Ibid.*, No. 681, 1914; *Senate of Md.*, No. 673, 1916.

¹⁴ *Ibid.*, No. 119, 1914.

¹⁵ *Ibid.*, No. 292, 1922.

¹⁶ *Ibid.*, No. 273, 1922.

¹⁷ *Ibid.*, No. 40, 1922.

no such agent were appointed, the Secretary of the State Tax Commission could be used for this purpose.¹⁸ These bills hardly represent the final form which holding company legislation will take. They are probably intended merely as entering wedges to open the way for more adequate legislation in a field where it is needed. It is true that the law does, at present, give the Commission jurisdiction over all companies controlling utilities operating in Maryland, but the authority is not clearly defined, and the method of exercising it is nowhere indicated.

In 1922, a bill was introduced in the General Assembly which would make it unlawful for any public utility to charge a service fee, or for the Commission to authorize it.¹⁹ Another bill introduced the same year proposed to require that all express companies maintain offices at railroad stations unless relieved of this necessity by the Commission.²⁰

Possibly because of the decision of the Commission in the Baltimore County Water and Electric Company case in 1917,²¹ or, perhaps, because of the case of the Consolidated Gas, Electric Light and Power Company,²² the General Assembly of 1918 proved especially prolific in Public Service Commission bills. No less than nineteen different bills on this subject were introduced that year. An extensive section was proposed to make all provisions with regard to common carriers applicable to gas and electric corporations.²³ These provisions in condensed form, were added to the law four years later.²⁴

Of more novel character, however, were the bills which proposed to punish public utilities for a negligent disregard of their duties. One bill proposed criminal penalties, for the officers and employees of the company, if there were a cessation of service for an unreasonable length of time, and if the company had contracted with a municipality for furnishing such service to the public.²⁵ Another bill permitted the appointment of a receiver for companies which had contracted to furnish water, sewerage, or light service but had failed to supply such service for a period of twenty-four hours.²⁶ A group

¹⁸ *Ibid.*, No. 5, 1929; *Ibid.*, No. 188, 1929; *Ibid.*, No. 153, 1931.

¹⁹ *House of Delegates*, No. 325, 1922.

²⁰ *Ibid.*, No. 263, 1922.

²¹ *P. S. C. Md.*, VIII, p. 182.

²² *Ibid.*, IX, p. 297.

²³ *Senate of Md.*, No. 314, 1918; *House of Delegates*, No. 258, 1918.

²⁴ *Laws of Md.*, 1922, Ch. 355; *An. Code, P. G. L.*, 1924, Art. 23, Sec. 398.

²⁵ *Senate of Md.*, No. 286, 1918.

²⁶ *Ibid.*, No. 288, 1918.

of bills introduced in the House of Delegates that year proposed that increases in gas, electric or water rates should not be fixed at more than 10% higher than the rates charged on July 1, 1917 without a prior investigation by the Public Service Commission.²⁷

A bill was also introduced to permit common carriers to allow uniformed members of the Police Department and the Fire Department to ride free of charge.²⁸ Another bill was introduced which provided that electric railways must accept tickets torn out of commutation books, or suffer a penalty of one hundred dollars.²⁹

In order to require public utilities to assist in the damage suits of persons injured in accidents, a bill was introduced which would compel public utilities to make every effort to procure the names and addresses of witnesses to accidents, to file these with the Commission, and to have this information open to the persons injured, or to their lawful representatives.³⁰

In the last session of the legislature, in 1931, a bill was introduced which required that gas delivered to consumers in Annapolis should have the same purity, heating, and illuminating power as the gas delivered to consumers in Baltimore. The bill was passed, but was vetoed by the Governor.³¹

III. JURISDICTION OF THE COMMISSION

The bills dealing with the jurisdiction of the Commission fall into two classes: (1) those designed to decrease the powers of the Commission (2) those designed to extend the jurisdictional powers of the Commission.

In 1920, bills were introduced to modify considerably the provisions of the law which gave the Commission jurisdiction over motor vehicles used in the public transportation of freight and passengers,³² and in 1931, a bill was introduced to repeal the sections of the law dealing with "Employees Certificates of Convenience."³³

Two bills dealt with fees for meters. One bill proposed to substitute a fixed fee of one dollar to consumers and twenty-five

²⁷ *House of Delegates*, Nos. 459, 460, and 473, 1918.

²⁸ *Ibid.*, No. 598, 1914.

²⁹ *Ibid.*, No. 692, 1920.

³⁰ *Ibid.*, No. 286, 1920.

³¹ *Ibid.*, No. 568, 1931.

³² *Senate of Md.*, Nos. 115 and 116, 1920.

³³ *House of Delegates*, No. 563, 1931.

cents to the public utility in place of the "reasonable fee" prescribed by the law,³⁴ and the other bill prohibited the Commission from fixing meter rentals, and, making any charges to consumers for the inspection of meters.³⁵ The latter bill was passed, but was vetoed by the Governor.

A very interesting bill, but of doubtful constitutionality, made its appearance in 1914. It proposed that the valuation of easements should be fixed, for rate making purposes, at no more than the amounts actually expended for them, at the times when the franchises were acquired. The return to the public utilities was specifically limited to the legal rate of interest upon a fair value of their properties, unless the Commission could give reasons, based on public interest, explaining why a higher rate of return should be allowed.^{35a}

Other bills have also been of doubtful constitutionality. One bill, would confer upon the Commission the power to issue an "Order under Penalty of Forfeiture" which placed the public utility against which it was directed under penalty of losing its franchises if it failed to comply with the order of the Commission.³⁶ Another bill would give the Commission power to fix the income of stock and bond holders of public service corporations at six per cent and to use the legal rate of interest as applicable to its bonds and stock issues in computing a fair return.³⁷

Rather early in the history of the Commission, an attempt was made to restrict its jurisdiction over rate making, by the introduction of a bill which provided that telephone companies must charge rates in accordance with the Laws of 1892, 1894, and 1896.³⁸

A long and quite important series of bills was introduced from session to session, which dealt with the enlargement or restatement of the powers of the Commission. Many of these bills, after numerous failures, finally became part of the Public Service Commission Law.

The bills which were finally enacted as laws were those which attempted to confer upon the Commission the following powers: (1) the fixing of minimum as well as maximum rates,

³⁴ *Senate of Md.*, No. 42, 1922.

³⁵ *Laws of Md.*, 1924, Ch. 517. *House of Delegates*, No. 598, 1924.

^{35a} *Ibid.*, No. 701, 1914.

³⁶ *Senate of Md.*, No. 287, 1914.

³⁷ *House of Delegates*, No. 559, 1920.

³⁸ *Senate of Md.*, No. 329, 1912.

(2) the suspension of rates filed by a public utility, (3) jurisdiction over the abandonment of franchises acquired or exercised before, as well as after, the passage of the Public Service Commission Law, and (4) authority to issue orders to continue in force for an indeterminate period of time, instead of for a designated period as required by the original statute. This legislation, which was strongly recommended in the "Report of the Public Service Commission" for the year 1926,³⁹ was finally passed in 1927.⁴⁰ Some of these provisions had been advocated as early as 1916, and in every session since, down to the passage of the act.⁴¹

One very important piece of legislation which received the hearty support of the Commission, but failed of final enactment, concerned plans for the elimination of grade crossings.⁴² Under the terms of the bills introduced, the Commission would have jurisdiction to order alterations in crossings, if such crossings were dangerous to public safety. The cost of such alterations was to be apportioned in the ratio of 65 and 35 between the railroad, whose crossings were being changed, on one side, and the state, counties, or municipalities on the other. These bills also conferred jurisdiction with respect to signal systems, and the construction of new crossings. The law was offered in the legislatures of 1914, 1916, 1918, and 1922, and always failed of passage.⁴³

One of the bills, which related to the power of the Commission to prescribe uniform systems of accounts proposed to grant to the Commission the power to prescribe "the manner in which appropriations shall be made and reserved to meet the

³⁹ *P. S. C. Md.*, XVII, pp. 11-13.

⁴⁰ *Laws of Md.*, 1927, Chs. 569, 335, 473, and 354.

⁴¹ The bill for allowing the fixing of minimum as well as a provision for maximum rates was first offered in 1922. (*Senate of Md.*, No. 35, 1922; *Ibid.*, No. 127, 1924) Bills dealing with the power of the Commission to suspend rates were offered as early as 1916. (*House of Delegates*, No. 69, 1916; *Ibid.*, No. 259, 1918; *Senate of Md.*, No. 318, 1918; *House of Delegates*, No. 451, 1920; *Senate of Md.*, No. 494, 1918; *House of Delegates*, No. 63, 1922; *Senate of Md.*, No. 125, 1924) The amendment with regard to the abandonment of franchises appeared as early as 1918. (*Ibid.*, No. 316, 1918; *House of Delegates*, No. 269, 1918; *Senate of Md.*, No. 34, 1922). The bill modifying the order making power was defeated in 1922 and 1924. (*House of Delegates*, No. 65, 1922; *Senate of Md.*, No. 123, 1924).

⁴² *P. S. C. Md.*, XII, p. 8.

⁴³ *Senate of Md.*, No. 615, 1914; *House of Delegates*, No. 51, 1916; *Senate of Md.*, No. 340, 1918; *House of Delegates*, No. 53, 1922. The jurisdiction in respect of grade crossings was conferred on the State Roads Commission. *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 91, Secs. 38 A to 38 K incl.

expense of depreciation and provide for the maintenance of the properties of such utilities at all times in proper condition to render adequate service.”⁴⁴

In 1922, a bill was introduced which would amplify the powers of the Commission with regard to security issues. It would permit the Commission to require full and frank disclosures by public utilities with regard to prices, purposes, benefits, brokerage fees and all other relevant matters when making their applications for authority to issue securities.⁴⁵

IV. MISCELLANEOUS

The important bills, remaining to be considered, dealt especially with operators of motor vehicles, street railways, telephone companies, and gas and electric companies. One bill concerning motor vehicles was a preliminary suggestion of the taxicab legislation in the General Assembly of 1931. The Commission was to be given the power to require liability insurance of all operators of motor vehicles, including taxicabs.⁴⁶

The powers which related particularly to street railways allowed the Commission to require vestibule cars, so as to prevent exposure of the company's employees to the elements,⁴⁷ to require every street car to carry a conductor and motorman,⁴⁸ and to prohibit charges to passengers who are not provided with seats.⁴⁹ The latter two bills covered motor busses as well as street cars.

Three of the street car bills dealt exclusively with the United Railways and Electric Company of Baltimore City. One of these bills permitted the Commission to require the extension of the company's line,⁵⁰ another provided that the Commission order a five cent fare to be charged from Baltimore to Towson,⁵¹ and a third would limit the carfare which the company could charge to five cents for a full fare, and three cents for a half-fare.⁵²

⁴⁴ *Senate of Md.*, No. 313, 1918; *House of Delegates*, No. 260, 1918.

⁴⁵ *Senate of Md.*, No. 38, 1922.

⁴⁶ *House of Delegates*, No. 64, 1922.

⁴⁷ *Ibid.*, No. 37, 1912.

⁴⁸ *Ibid.*, No. 421, 1929.

⁴⁹ *Ibid.*, No. 316, 1929.

⁵⁰ *Senate of Md.*, No. 490, 1912.

⁵¹ *Ibid.*, No. 617, 1916.

⁵² *Ibid.*, No. 4, 1924.

The telephone bills provided that flat rates, or charges, for telephone service might be established by the Commission.⁵³

With regard to gas and electric companies, three bills were introduced. One bill proposed to eliminate discounts on bills as an inducement for prompt payment, and provided that the Commission prescribe the net charge on the bills of the companies as the maximum charge.⁵⁴ Another bill proposed that in addition to the tests of gas made by the Commission, that a laboratory for this purpose should be established at the Johns Hopkins University and the cost to be borne by the public utility.⁵⁵ The final bill required that the Commission make an examination of the electric rates charged in the State, at least once a year. If the rate charged is found to be too high, the utility could take an appeal from this order, but the new rates would remain in force until set aside.⁵⁶

A few attempts have been made to correct clerical oversights which occurred in the original draft of the Public Service Commission Law, but these also belong with the bills defeated.⁵⁷

⁵³ *House of Delegates*, No. 701, 1914; *Ibid.*, No. 596, 1924.

⁵⁴ *Senate of Md.*, No. 317, 1914.

⁵⁵ *House of Delegates*, No. 552, 1922.

⁵⁶ *Ibid.*, No. 551, 1922.

⁵⁷ *Ibid.*, No. 51, 1922; *Senate of Md.*, No. 6, 1927.

CHAPTER IV

THE MARYLAND COMMISSION

I. ORGANIZATION OF THE COMMISSION

The staff of the Public Service Commission may be grouped under three heads: (a) the Commissioners, (b) the legal staff, (c) the administrative staff.

The Commissioners, and the general duties imposed upon them have already been discussed in the sections dealing with the law. At present the officers of the Commission are Harold E. West, Chairman, J. Frank Harper, and Steuart Purcell, a journalist, a lawyer, and an engineer, who have held office for eight years, twelve years, and five years, respectively. The average tenure of office, in former cases, has been four years.

The legal staff of the Commission consists in the General Counsel, and the People's Counsel. The office of People's Counsel was established as distinct from the other legal office in 1922. As early as 1913, however, William Cabell Bruce, the present (1932) General Counsel, had pointed out the desirability of completely separating the two functions of the legal staff.¹ The effect of this division is to make the General Counsel the legal adviser and advocate of the Commission, and the People's Counsel the representative of the general interest of consumers and public. When cases have been taken to court, the People's Counsel has appeared on the brief with the General Counsel. In addition to the permanent legal staff, special legal services have been employed for particular cases.

The experiment, which was tried in 1924-1927, of having the office of the Attorney-General act as General Counsel to the Commission proved unsatisfactory. After a trial for three years of dispensing with the General Counsel, the office was re-established.

With the exception of the six year period, during which he was in the United States Senate, William Cabell Bruce has been the General Counsel of the Commission since its establishment.

¹ *Selections from Speeches, Addresses and Political Writings of Wm. Cabell Bruce*, Baltimore, (1927), p. 123.

The third group of the organized staff of the Commission is also susceptible of a threefold classification: (a) general, (b) engineering, (c) rates and accounts. The chief administrative officer of the Commission is the Executive Secretary. The present officer, Frank Harper, has held this position since 1923, and has been associated with the Commission since 1912.

In an organization as small as the Maryland Public Service Commission, an absolute division of duties is not always feasible. The engineering department, which includes approximately fifteen persons, carries on the work of making valuations, inspecting meters, inspecting properties, testing the quality of gas and of water, investigating complaints, checking on transportation service, and investigating accidents. The work is divided among utilities engineers, and utilities inspectors under the supervision of a chief engineer, who is assisted by a valuation engineer, an engineer of transportation, and a superintendent of inspectors.

The Executive Secretary, in addition to being the principal administrative officer, also acts as Chief of the Bureau of Rates and Accounts. This bureau includes the Tariff and Rate Clerk and the accounting staff. The Tariff and Rate Clerk has charge of all rate and tariff schedules filed with the Commission. It is his duty to examine them critically, and to report any matters requiring attention to the Executive Secretary.

The accounting staff of the Commission consists in the Chief Auditor, the Field Auditor, and the Principal Account Clerk. In addition to his other duties, the latter also keeps the accounts of the Commission. The accounting staff receives the annual reports of the public utilities, and subjects them to an office audit. Because of the slenderness of the staff, field work must be kept down to a minimum. The auditors are, also, called upon to make preliminary reports on applications for permission to issue securities, and to follow up the reports filed after the issuance of the securities. In addition to these duties of a current nature, the auditors, also, prepare the data for rate and valuation cases. At times, special outside auditors have been employed.

If there is any point at which the work of the Commission might be extended it is in the department of auditing. A more adequate staff would make possible periodical field audits, improvements in accounting methods of the utilities, a more thorough inquiry into original costs, and a more critical investigation of operating accounts. These activities, which are

desirable in the case of about one hundred and twenty companies, cannot be carried out by two or three men.

In addition to the personnel described, the Commission, also, employs numerous clerks and stenographers in both a supervisory and a junior capacity. This entire administrative staff, with the exception of the official stenographer, comes under the operation of the state civil service law.

II. CLASSIFICATION OF CASES ON THE DOCKETS OF THE COMMISSION

Cases which come before the Public Service Commission may be entered upon one of the following four dockets:

- (1) The informal docket.
- (2) The correspondence docket.
- (3) The short notice and reparations docket.
- (4) The formal docket.

The informal and the correspondence dockets are designed to relieve the formal docket from being burdened with a large number of petty complaints. Petty protests of all kinds in regard to rates, service, or any other questions, which may arise between a public utility and its consumers, or the public, are filed on these dockets. The correspondence docket is reserved for cases, which arise by correspondence, or which require correspondence for their disposition. The informal docket includes cases which arise, or are disposed of, by personal interviews or telephone calls. In addition to protests and complaints, a number of miscellaneous matters which come before the Commission, are also listed on these dockets.

The short notice and reparations docket is restricted to cases of two types:

- (1) Applications of public utilities for permission to change rates on less than the 30 days notice required by statute.
- (2) Joint applications of public utilities and consumers for permission to the public utility to refund charges collected by error, or illegally.

The formal docket carries the really significant cases which come before the Commission. These cases may originate by the formal action of the Commission, by the application of the public utility, by the complaints, or protests, filed by consumers, municipalities, civic bodies, or by the Commission itself. Actions begun by the Commission may consist, merely, in a formal promulgation of rules, or the action may begin an inves-

tigation of the affairs and charges of a public utility. Applications filed by the public utility are generally for permission to issue securities, to extend their services, to construct or to acquire new properties, to purchase securities of other utilities, to abandon property or service, to sell or to transfer property, to file rate schedules, and to operate motor vehicles. Complaints and protests are the means of instituting actions against a public utility because of the rates charged, or the services furnished by the public utility.

III. THE PUBLIC UTILITIES

A full list of the types of public utilities and other organizations over which the Commission has jurisdiction was presented in the account of the law.

In its report for 1930,² the Commission listed one hundred and fifty-five public utilities under its jurisdiction. The following is a list of the types of utility, and the number of each type reporting:

Total Utilities	155
Electric Light Companies.....	44
Steam Railroad Companies.....	30
Water Companies	28
Electric Railroad Companies.....	11
Gas Companies	10
Steamboat Companies and Others.....	7
Gas and Electric Companies.....	6
Telephone Companies	6
Bridge Companies	5
Express Companies	3
Telegraph Companies	2
Miscellaneous Companies	2
Sleeping Car Companies	1

In addition to the above companies, the reports of which are included in the annual publications of the Public Service Commission, the Commission also has jurisdiction over bus companies, trucking companies, taxicabs, miscellaneous commissions, and special matters entrusted to it. Although bus companies are required to file annual reports, the statements rendered by these companies have not proved sufficiently full and reliable, as yet, to warrant publication in the annual reports of the Commission.

² *P. S. C. Md.*, XXI, p. 5.

The utilities technically regulated by the Maryland Commission represent over two billion dollars in capital stock and funded debt. These totals, include, however, railroads, of an interstate character, telegraph companies, sleeping car companies, express companies, and others which report to the Commission, but which are in fact hardly under its regulatory powers. If the capitalization of steam railroads, telegraph companies, and sleeping car companies were eliminated the total capitalization would be reduced from approximately two billion dollars, to approximately four hundred million dollars. This latter amount is a more accurate statement of the capital represented by the companies actually regulated by the Commission, although it includes interurban electric railways, which cross state lines, and other utilities, which serve territory in more than one state.

A question of particular interest at this time is the holding company relationship of the Maryland public utilities. The outstanding example of holding company control is the Chesapeake and Potomac Telephone Company, a subsidiary of the American Telephone and Telegraph Company.

An examination was made of the reports filed for the year 1930, for eighty-five public utilities, and it showed that forty-four were under holding company control and forty-one were not. The reports examined included gas companies, gas and electric companies, electric railways, water companies, and light and power utilities. Control is most generally found in the gas companies and the light and power companies. It is least found in the water companies. Control is usually direct and is effected by a 100% stock ownership.

IV. COST OF MAINTAINING THE COMMISSION

Under the provision of the Maryland constitution, as amended in 1916,³ all appropriations out of the state treasury may be made only by a Budget Bill or by a Supplementary Appropriation Bill. The funds for maintaining the Commission are voted upon, therefore, at each meeting of the General Assembly, together with the appropriations for all other state activities. The Budget Bills make detailed provisions as to expenditures. Prior to the adoption of the constitutional amendment, the state legislature merely made a general appropriation for financing the various state agencies.

³ *Laws of Md.*, 1916, Ch. 159.

The total cost of maintaining the Commission, from the date of its organization, May 1, 1910 to the close of the year 1930 has been \$2,250,995.48, as shown in the tables at the end of this chapter. The average annual cost over the entire period has, therefore, been approximately \$109,000. The average for the last five years has been approximately \$128,000. The annual cost of maintenance ranges from about \$71,000 for the fiscal year 1911-1912 to about \$144,000 for the fiscal year 1924-1925. For the fiscal year 1929-1930 the cost was \$129,589.65.

The entire cost of maintaining the Commission has not always fallen exclusively upon the State of Maryland. For the period from May 1, 1910 to September 30, 1916, the City of Baltimore contributed the sum of \$57,939.63. This contribution was made toward the salaries of the Commissioners, and the General Counsel, in accordance with the original law.⁴ As set forth in the chapter on the law, this burden was placed on Baltimore City to avoid what was considered a possible conflict with the Maryland Constitution. After this doubt was removed by the Court of Appeals, the entire expense was assumed by the State.

Another substantial contribution to the cost of maintaining the Commission was made by the Consolidated Gas, Electric Light and Power Co., the Chesapeake and Potomac Telephone Company, and the United Railways and Electric Company. This contribution, made during the years 1921 and 1922, amounted to \$35,088.19. This peculiar arrangement was entered into by the Commission, and the public utilities named, in accordance with the permission granted in the third section of Chapter 487, of the Laws of Maryland, 1920. The purpose of the arrangement was to provide the Commission with funds adequate to carry on the work of inspection, required by the law, and the orders and regulations, which it had promulgated. The Commission also attempted to have this practice made a part of the law by the introduction of a bill in the General Assembly of 1922. The bill was defeated, but the State granted the additional appropriations required by the Commission.

According to the studies of Dr. Wm. E. Mosher, Maryland seems to fall about in the middle or higher brackets in regard to the salaries paid to Commissioners and the general budget appropriations.⁵ The average salaries paid to the Commis-

⁴ *Ibid.*, 1910, Ch. 180, Sec. 2.

⁵ Mosher, *Electrical Utilities*, (1929) pp. 9 and 13.

sioners throughout the United States is about \$5,000. In Maryland two Commissioners receive \$5,000 each, and the chairman receives \$6,000 per annum. As to budget appropriations, Maryland belongs with the fourteen states which expend over \$100,000 each year, as compared to twenty-five states which spend less than that amount. The average expenditure per state is \$126,350 which is about \$3,000 less than the cost of the Public Service Commission of Maryland for the fiscal year 1929-1930.

The tables which follow present in detail the cost of maintaining the Commission, the state appropriations, and the various sources of revenue. Table A is a summary and covers the entire period from May 1, 1910 to September 30, 1930. Tables B to E present the detail supporting Table A.

PUBLIC SERVICE COMMISSION OF MARYLAND

TABLE A.—DISBURSEMENTS OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FROM MAY 1, 1910 TO SEPTEMBER 30, 1930: BY TYPE OF DISBURSEMENT AND BY WHOM PAID, BY FOUR MAJOR TIME INTERVALS, ALSO STATE APPROPRIATIONS AND RECEIPTS FROM FEES, ETC.

TYPE OF DISBURSEMENT	TOTAL MAY 1, 1910 TO SEPT. 30, 1930	MAJOR TIME INTERVALS			
		May 1, 1910 to April 30, 1915	May 1, 1915 to Sept. 30, 1920	Oct. 1, 1920 to Sept. 30, 1925	Oct. 1, 1925 to Sept. 30, 1930
TOTAL DISBURSEMENTS.....	\$2,250,995.48	\$395,590.86	\$532,311.25	\$683,171.87	\$639,921.50
TOTAL SALARIES.....	\$1,627,733.53	\$273,948.52	*\$418,966.40	\$484,538.68	\$450,279.93
Commissioners.....	\$ 326,163.28	\$ 80,211.05	\$ 86,454.52	\$ 79,497.71	\$ 80,000.00
Legal.....	148,458.55	37,999.66	49,527.50	32,231.39	28,700.00
Auditing.....	95,397.85	15,043.70	16,628.99	31,086.69	32,638.47
Secretary to the Commission.....	75,972.58	14,822.58	16,250.00	18,500.00	26,400.00
Clerks and Stenographers.....	402,127.25	49,343.64	110,444.81	134,892.98	107,445.82
Engineers and Inspectors.....	579,614.02	76,527.89	139,660.58	188,329.91	175,095.64
TOTAL EXPENSES—General.....	\$ 623,261.95	\$121,642.34	*\$113,344.85	\$198,633.19	\$189,641.57
Special Services.....	\$ 125,497.68	\$ 41,602.55	\$ 19,123.11	\$ 42,120.88	\$ 22,651.14
Rent.....	205,801.58	16,378.20	32,083.38	75,000.00	82,340.00
Traveling Expenses.....	64,956.66	4,560.89	13,747.29	24,679.16	21,969.32
Stationery and Printing.....	99,158.62	19,788.44	23,983.37	28,377.87	27,008.94
Furniture, Equipment and Appliances.....	43,927.93	17,941.23	8,528.89	6,217.68	11,240.13
Stenographer's Reports.....	10,115.00	10,115.00	.....	.....	.....
All Other Expenses.....	73,804.48	11,256.03	15,878.81	22,237.60	24,432.04
Paid by State of Maryland.....	\$2,157,967.66	\$350,999.17	\$518,963.31	\$648,083.68	\$639,921.50
Paid by City of Baltimore.....	57,939.63	44,591.69	13,347.94	.....	.....
Paid by Public Utilities.....	35,088.19	.....	.....	35,088.19	.....
State Appropriations.....	\$2,270,032.91	\$400,000.00	\$517,162.91	\$652,870.00	\$700,000.00
Receipts from Fees, etc.....	\$ 24,450.92	\$ 8,817.36	\$ 6,669.32	\$ 6,045.80	\$ 2,918.44

* Some of the details on Salaries and Expenses were approximated for the five month period from May 1, 1916 to September 30, 1916.

TABLE B.—DISBURSEMENTS OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FROM MAY 1, 1910 TO APRIL 30, 1915: BY TYPE OF DISBURSEMENT AND BY WHOM PAID, BY FISCAL YEARS, ALSO STATE APPROPRIATIONS AND RECEIPTS FROM FEES, ETC.

TYPE OF DISBURSEMENT	TOTAL MAY 1, 1910 TO APRIL 30, 1915	FISCAL YEARS				
		May 1, 1910 to April 30, 1911	May 1, 1911 to April 30, 1912	May 1, 1912 to April 30, 1913	May 1, 1913 to April 30, 1914	May 1, 1914 to April 30, 1915
TOTAL DISBURSEMENTS.....	\$395,590.86	\$ 54,854.58	\$ 71,323.48	\$ 83,929.47	\$ 83,624.08	\$101,859.25
TOTAL SALARIES.....	\$273,948.52	\$ 39,803.16	\$ 56,782.85	\$ 56,666.35	\$ 58,723.73	\$ 61,972.43
Commissioners.....	\$ 80,211.05	\$ 15,572.58	\$ 15,743.89	\$ 16,133.78	\$ 15,583.29	\$ 17,177.51
Legal.....	37,999.66	6,799.66	7,800.00	7,800.00	7,800.00	7,800.00
Auditing.....	15,043.70	1,502.61	3,778.12	3,529.17	3,729.50	2,504.30
Secretary to the Commission.....	14,822.58	2,879.03	3,000.00	2,943.55	3,000.00	3,000.00
Clerks and Stenographers.....	49,343.64	5,287.02	9,365.21	11,034.85	11,725.94	11,930.62
Engineers and Inspectors.....	76,527.89	7,762.26	17,095.63	15,225.00	16,885.00	19,560.00
TOTAL EXPENSES—General.....	\$121,642.34	\$ 15,051.42	\$ 14,540.63	\$ 27,263.12	\$ 24,900.35	\$ 39,886.82
Special Services.....	\$ 41,602.55	\$ 1,000.00	\$ 2,943.81	\$ 11,758.53	\$ 6,850.64	\$ 19,049.57
Rent.....	16,378.20	2,063.34	3,249.17	3,369.96	3,374.96	4,320.77
Traveling Expenses.....	4,560.89	819.12	1,098.71	900.85	899.30	842.91
Stationery and Printing.....	19,788.44	2,476.74	3,924.34	3,206.20	5,876.26	4,304.90
Furniture, Equipment and Appliances.....	17,941.23	5,655.99	1,387.18	762.30	3,452.63	6,683.13
Stenographer's Reports.....	10,115.00	1,673.90	646.19	6,060.69	1,244.27	489.95
All Other Expenses.....	11,256.03	1,362.33	1,291.23	1,204.59	3,202.29	4,195.59
Paid by State of Maryland.....	\$350,999.17	\$ 46,415.86	\$ 62,731.22	\$ 74,995.69	\$ 74,990.79	\$ 91,865.61
Paid by City of Baltimore.....	44,591.69	8,438.72	8,592.26	8,933.78	8,633.29	9,993.64
State Appropriations.....	\$400,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	*\$100,000.00
Receipts from Fees, etc.....	\$ 8,817.36	\$ 691.00	\$ 1,389.20	\$ 4,845.21	\$ 1,130.80	\$ 761.15

* Original Appropriation was \$75,000.00, but \$25,000.00 was added for year ending September 30, 1915 by Laws of Maryland, 1914, Chapter 386.

PUBLIC SERVICE COMMISSION OF MARYLAND

TABLE C.—DISBURSEMENTS OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FROM MAY 1, 1915 TO SEPTEMBER 30, 1920: BY TYPE OF DISBURSEMENT AND BY WHOM PAID, BY FISCAL PERIODS, ALSO STATE APPROPRIATIONS AND RECEIPTS FROM FEES, ETC.

TYPE OF DISBURSEMENT	TOTAL MAY 1, 1915 TO SEPT. 30, 1920	FISCAL PERIODS					
		May 1, 1915 to April 30, 1916	May 1, 1916 to Sept. 30, 1916	Oct. 1, 1916 to Sept. 30, 1917	Oct. 1, 1917 to Sept. 30, 1918	Oct. 1, 1918 to Sept. 30, 1919	Oct. 1, 1919 to Sept. 30, 1920
TOTAL DISBURSEMENTS.....	\$532,311.25	\$ 93,015.92	\$ 44,287.83	\$ 94,650.54	\$ 94,970.97	\$102,569.73	\$102,816.26
TOTAL SALARIES.....	\$418,966.40	\$ 73,897.96	*\$31,271.65	\$ 74,429.52	\$ 76,413.64	\$ 80,123.76	\$ 82,829.87
Commissioners.....	\$ 86,454.52	\$ 17,082.52	*\$ 6,616.65	\$ 15,677.39	\$ 15,999.98	\$ 15,932.80	\$ 15,145.18
Legal.....	49,527.50	7,800.00	*3,405.00	39,600.00	9,600.00	9,522.50	9,600.00
Auditing.....	16,628.99	3,370.94	1,000.00	2,558.05	2,500.00	3,600.00	3,600.00
Secretary to the Commission..	16,250.00	3,000.00	1,000.00	3,000.00	3,000.00	3,000.00	3,000.00
Clerks and Stenographers.....	110,444.81	15,698.82	*7,500.00	19,036.61	20,177.28	23,367.75	24,684.35
Engineers and Inspectors.....	139,660.58	26,945.68	*11,500.00	24,557.47	25,136.38	24,700.71	26,820.34
TOTAL EXPENSES—General...	\$113,344.85	\$ 19,117.96	*\$ 13,016.18	\$ 20,221.02	\$ 18,557.33	\$ 22,445.97	\$ 19,986.39
Special Services.....	\$ 19,123.11	\$ 5,662.23	\$ 4,781.28	\$ 1,030.25	\$ 2,780.76	\$ 3,791.09	\$ 1,077.50
Rent.....	32,083.38	5,583.38	*2,500.00	6,000.00	6,000.00	6,000.00	6,000.00
Traveling Expenses.....	13,747.29	1,978.53	*1,000.00	2,313.14	1,763.34	3,197.59	3,494.69
Stationery and Printing.....	23,983.37	2,117.36	*3,000.00	5,340.93	2,544.68	4,991.09	5,989.31
Furniture, Equipment and Appliances.....	8,528.89	1,500.14	*634.00	2,414.75	1,000.06	1,894.98	1,084.96
Stenographer's Reports.....	.....	.....	.....	.....	.....	.....	.....
All Other Expenses.....	15,878.81	2,276.32	*1,100.90	3,121.95	4,468.49	2,571.22	2,339.93
Paid by State of Maryland...	\$518,963.31	\$ 83,133.40	*\$ 40,822.41	\$ 94,650.54	\$ 94,970.97	\$102,569.73	\$102,816.26
Paid by City of Baltimore....	13,347.94	9,882.52	3,465.42	.....	.....	.....	.....
State Appropriations.....	\$517,162.91	\$ 75,000.00	\$ 40,822.41	\$ 95,000.00	\$ 95,000.00	\$105,670.25	\$105,670.25
Receipts from Fees, etc.....	\$ 6,669.32	\$ 2,188.80	\$ 383.45	\$ 799.20	\$ 1,466.56	\$ 1,476.51	\$ 354.80

* Approximate.

¹ Excess over appropriation taken care of by special appropriation granted for preceding year² The appropriation for this period was \$77,000.00, but upon the change to the new fiscal year ending September 30, the unexpended balance of the appropriation was returned to the state.³ Special appropriation of \$1,800.00 was made for the assistant to the General Counsel.

TABLE D.—DISBURSEMENTS OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FROM OCTOBER 1, 1920 TO SEPTEMBER 30, 1925: BY TYPE OF DISBURSEMENT AND BY WHOM PAID, BY FISCAL YEARS, ALSO STATE APPROPRIATIONS AND RECEIPTS FROM FEES, ETC.

TYPE OF DISBURSEMENT	TOTAL OCT. 1, 1920 TO SEPT. 30, 1925	FISCAL YEARS				
		Oct. 1, 1920 to Sept. 30, 1921	Oct. 1, 1921 to Sept. 30, 1922	Oct. 1, 1922 to Sept. 30, 1923	Oct. 1, 1923 to Sept. 30, 1924	Oct. 1, 1924 to Sept. 30, 1925
TOTAL DISBURSEMENTS.	\$683,171.87	\$130,906.81	\$141,034.58	\$135,434.78	\$131,825.70	\$143,970.00
TOTAL SALARIES.	\$484,538.68	\$ 94,523.41	\$102,196.40	\$102,216.77	\$ 96,353.35	\$ 89,248.75
Commissioners.						
Legal.	\$ 79,497.71	\$ 15,497.71	\$ 16,000.00	\$ 16,000.00	\$ 16,000.00	\$ 16,000.00
Auditing.	32,231.39	7,800.00	7,206.40	7,696.77	5,028.22	4,500.00
Secretary to the Commission.	31,086.69	5,271.21	6,200.00	7,040.00	7,040.00	5,535.48
Clerks and Stenographers.	18,500.00	3,000.00	3,000.00	2,900.00	*4,800.00	4,800.00
Engineers and Inspectors.	134,892.98	30,207.04	31,260.00	27,930.00	22,710.13	22,785.81
	188,329.91	32,747.45	38,530.00	40,650.00	40,775.00	35,627.46
TOTAL EXPENSES—General.	\$198,633.19	\$ 36,383.40	\$ 38,838.18	\$ 33,218.01	\$ 35,472.35	\$ 54,721.25
Special Services.						
Rent.	\$ 42,120.88	\$ 4,360.43	\$ 5,545.00	\$ 1,800.00	\$ 5,543.31	\$ 24,872.14
Traveling Expenses.	75,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00
Stationery and Printing.	24,679.16	5,273.57	5,727.95	5,257.00	5,804.99	2,615.65
Furniture, Equipment and Appliances.	28,377.87	6,222.86	7,308.88	5,266.26	4,822.20	4,757.67
Stenographer's Reports.	6,217.68	2,383.13	1,389.27	910.91	722.74	811.63
All Other Expenses.	22,237.60	3,143.41	3,867.08	4,983.84	3,579.11	6,664.16
Paid by State of Maryland.	\$648,083.68	\$116,418.62	\$120,434.58	\$135,434.78	\$131,825.70	\$143,970.00
Paid by Public Utilities.	35,088.19	14,488.19	20,600.00			
State Appropriations.	\$652,870.00	\$119,560.00	\$119,560.00	\$138,890.00	\$138,890.00	\$135,970.00
Receipts from Fees, etc.	\$ 6,045.80	\$ 1,478.05	\$ 1,324.42	\$ 982.68	\$ 1,351.21	\$ 909.44

* Chief of Bureau of Rates and Tariffs acted as Secretary, and still continues so to act.

¹ Reserved for Special Services in Succeeding Year \$2,500.00 Additional.

² Reserved for Special Services in Succeeding Year \$2,500.00 Additional.

³ Reserved for Special Services in Succeeding Year \$8,000.00 Additional.

TABLE E.—DISBURSEMENTS OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FROM OCTOBER 1, 1925 TO SEPTEMBER 30, 1930: BY TYPE OF DISBURSEMENT AND BY WHOM PAID, BY FISCAL YEARS, ALSO STATE APPROPRIATIONS AND RECEIPTS FROM FEES, ETC.

TYPE OF DISBURSEMENT	TOTAL OCT. 1, 1925 TO SEPT. 30, 1930	FISCAL YEARS					
		Oct. 1, 1925 to Sept. 30, 1926	Oct. 1, 1926 Sept. 30, 1927	Oct. 1, 1927 to Sept. 30, 1928	Oct. 1, 1928 to Sept. 30, 1929	Oct. 1, 1929 to Sept. 30, 1930	
TOTAL DISBURSEMENTS.....	\$639,921.50	\$127,844.04	\$122,491.39	\$139,225.90	\$120,770.52	\$129,589.65	
TOTAL SALARIES.....	\$450,279.93	\$ 89,454.76	\$ 91,480.61	\$ 89,705.00	\$ 88,135.39	\$ 91,504.17	
Commissioners.....	\$ 80,000.00	\$ 16,000.00	\$ 16,000.00	\$ 16,000.00	\$ 16,000.00	\$ 16,000.00	
Legal.....	28,700.00	4,500.00	4,500.00	4,500.00	5,900.00	9,300.00	
Auditing.....	32,638.47	6,520.97	6,285.00	6,825.00	6,107.50	6,900.00	
Secretary to the Commission.....	26,400.00	4,800.00	5,400.00	5,400.00	5,400.00	5,400.00	
Clerks and Stenographers.....	107,445.82	20,955.16	21,634.00	21,440.00	21,496.66	21,920.00	
Engineers and Inspectors.....	175,095.64	36,678.63	37,661.61	35,540.00	33,231.23	31,984.17	
TOTAL EXPENSES—General.....	\$189,641.57	\$ 38,389.28	\$ 31,010.78	\$ 49,520.90	\$ 32,635.13	\$ 38,085.48	
Special Services.....	\$ 22,651.14	\$ 1,802.44	.....	\$ 11,667.50	\$ 3,261.90	\$ 5,919.30	
Rent.....	82,340.00	16,000.00	16,000.00	16,225.00	16,585.00	17,550.00	
Traveling Expenses.....	21,969.32	3,722.49	3,804.25	4,070.92	4,052.04	6,319.62	
Stationery and Printing.....	27,008.94	6,642.26	5,993.99	5,047.89	5,763.32	3,561.48	
Furniture, Equipment and Appliances.....	11,240.13	4,718.88	1,277.48	3,384.91	577.51	1,281.35	
Stenographer's Reports.....	.....	.....	.....	.....	.....	.....	
All Other Expenses.....	24,432.04	5,503.21	3,935.06	9,124.68	*2,395.36	3,473.73	
Paid by State of Maryland.....	\$639,921.50	\$127,844.04	\$122,491.39	\$139,225.90	\$120,770.52	\$129,589.65	
State Appropriations.....	\$700,000.00	\$135,970.00	\$135,970.00	\$142,020.00	\$142,020.00	\$144,020.00	
Receipts from Fees, etc.....	\$ 2,918.44	\$ 354.14	\$ 817.40	\$ 535.48	\$ 573.13	\$ 638.29	

* Refund of Court Costs paid in Preceding Year \$2,518.65 Deducted.

† Returned to State out of Appropriation \$21,230.35.

¹ Reserved for Sundry Purposes Succeeding Year \$12,000.00 Additional.

² Reserved for Sundry Purposes Succeeding Year \$14,000.00 Additional.

³ Reserved for Sundry Purposes Succeeding Year \$17,500.00 Additional.

⁴ Reserved for Sundry Purposes Succeeding Year \$10,700.00 Additional.

CHAPTER V

THE DOCKETS OF THE COMMISSION¹

It has already been shown that the cases which come before the Public Service Commission are classified in four dockets: (1) The Informal Docket (2) The Correspondence Docket (3) The Short Notice and Reparations Docket (4) The Formal Docket. A total of over 13,000 cases have been entered on all of these records since the establishment of the Commission in 1910. For the sake of clarity and brevity, it will be convenient to treat the Informal Docket and the Correspondence Docket under a single heading, because the subjects which they include are identical, and each was used exclusively for some part of the time since its establishment. The term "docket" as applied to these various filing devices of the Commission, particularly with regard to the Informal and Correspondence Dockets is, perhaps, a little misleading.

1. THE CORRESPONDENCE DOCKET AND THE INFORMAL DOCKET

These dockets were established by the Commission as the repository of the many petty claims which came to the Commission, and which would serve to burden unduly the Formal Docket, if they were entered there. The process of weeding out, was not employed most effectively, however, until about 1921, as may be seen from an examination of the data on the Formal Docket.

In addition to the regular business of the Commission which one would expect to find docketed here, there are also a great number of miscellaneous subjects which have come to the Commission's office and require the attention of its officers, or employees. These miscellaneous subjects include such matters as printing contracts, the distribution of annual reports and a various host of inquiries. Primarily, however, the business on these dockets, of concern here, is the great number of petty

¹ In practice before the Commission, the common law rules of evidence and pleading are not enforced. The regulations of the Commission are quite informal, and are concerned with the substance rather than with the form of the proceedings.

disputes between the consumers or public and the public utilities, with regard to rates and services. In a great number of instances there is no legal merit to the complaint, and if any satisfaction is obtained by the complainant, it is because the public utility is willing to make a concession for the sake of good-will. In handling these cases the Commission, or its employees, are acting as mediators, or conciliators rather than as judges. In many cases the complainant is suffering only from a sense of outraged dignity.

The following is a partial list of the types of complaints:

(A) Rates

(a) Telephone companies

1. Excessive toll charges
2. Charges for installing or removing telephone
3. Rates for service
4. Incorrect billing
5. Charges for hand telephone set

(b) Street Railways

1. Rates for service
2. Rates for different zones
3. Refunds for unused commutation tickets

(c) Gas and Electric Companies

1. Charges for extensions
2. Charges for transformers
3. Errors in billing
4. Rates for different classes of service

(d) Miscellaneous

1. "Short Haul" rule violated
2. Bridge tolls
3. Rates for transportation of milk and cream

(B) Service

(a) Telephone Companies

1. Delayed installation of service
2. Delayed removal of equipment
3. Defective service
4. Directory listings
5. Failure to complete calls
6. Failure of service
7. Installation of dial telephones
8. Radio interference
9. Change in telephone number

- (b) Street Railways
 - 1. Lack of heat in cars
 - 2. Discourtesy of employees
 - 3. Crowded cars
 - 4. Frequency of service
 - 5. Delays in service
 - 6. Change in location of tracks
 - 7. Failure to extend service
 - 8. Noisy operation
 - 9. Transfer privileges
 - 10. Determination of car stops
 - 11. Failure to stop car
 - 12. Night schedule of street cars
 - 13. Use of "one man" cars
- (c) Gas and Electric Companies
 - 1. Improper connections
 - 2. Meter complaints
 - 3. Billing methods
 - 4. Relocation of service equipment
 - 5. Change in electric service cycles
- (d) Miscellaneous
 - 1. Discontinuance of train service
 - 2. Inadequate or unsafe equipment
 - 3. Location of poles
 - 4. Claims for losses
 - 5. Illegal operation of motor vehicles
 - 6. Noisy operation of motor vehicles

The above list is not intended to be exhaustive, but it is given for the purpose of illustrating the types of complaints on these dockets. No effort has been made to tabulate the cases listed on these dockets according to this minute division. Only four headings have been used: Rates, Service, Rates and Service, and Others.

(1) THE CORRESPONDENCE DOCKET

The following is an analysis of the cases on the Correspondence Docket under these various headings for the years for which the Correspondence Docket was maintained, based on the year in which the cases were instituted:

YEAR	TOTAL CASES	TYPES OF CASES			
		Rates	Service	Rates and Service	All Other
TOTAL CASES....	4850	1149	2790	55	856
1910.....	53	15	21	1	16
1911.....	154	74	33	2	45
1912.....	268	88	101	6	73
1913.....	189	67	89	2	31
1914.....	118	42	54	1	21
1915.....	47	14	18	.....	15
1921.....	537	133	311	15	78
1922.....	495	126	248	7	114
1923.....	486	102	274	2	108
1924.....	360	81	224	2	53
1925.....	350	51	234	6	59
1926.....	363	68	261	.....	34
1927.....	303	62	174	6	61
1928.....	341	75	214	1	51
1929.....	362	81	234	4	43
1930.....	424	70	300	.....	54

It will be noted in the table above that the sum total of complaints with regard to rates and service entered on this docket is 3994, as follows:

Total	3994
Rates	1149
Service	2790
Rates and Service.....	55

Over half of these complaints concern the three principal public utilities of Baltimore City as follows:

Total	2066
Chesapeake & Potomac Telephone Company	987
United Railways & Electric Company....	713
Consolidated Gas, Elec. Light & Power Co.	366

The reason for this concentration is twofold: (1) the importance of these public utilities and the large public which they serve (2) their location in Baltimore where the Commission is also located, and the consequent easy accessibility for filing complaints of a petty nature.

The following is a summary of the types of complaints filed in respect of the three principal utilities:

TYPE OF CASE	TOTAL	THREE PRINCIPAL UTILITIES		
		C. & P. Tel. Co.	United Rwys.	Cons. Gas
TOTAL.....	2066	987	713	366
Rates.....	462	211	97	154
Service.....	1581	762	611	208
Rates and Service.....	23	14	5	4

It is interesting to see the predominating position which service cases play in the complaints of the telephone and street railways companies as compared to the gas and electric company. The above data give striking evidence of the complex character of the rate structure of the latter type of public utility. The ratio of rate cases to service cases, for each of the above companies, remains fairly constant from year to year.

A study has been made of all the cases on the Correspondence Docket to determine the time intervals elapsing from the date the case was filed to the date of final disposition. The following shows the distribution :

Total	4850
Less than 3 months.....	3848
Three to six months.....	494
Six to nine months.....	174
Nine to twelve months.....	76
Over one year.....	94
Never closed	164

All but a few of the cases "never closed" have been on the docket since 1915, but no formal record has been made of their disposition.

For the year 1930, a detailed distribution of the time intervals elapsing would appear as follows :

Total	424
Less than three months.....	364
Three to six months.....	44
Six to nine months.....	10
Nine to twelve months.....	1
Over one year.....	2
Never closed	3

A more detailed analysis of the cases which were closed in less than three months, shows that of the three hundred and sixty-four cases so closed, one hundred and seventy-five were closed in less than one month.

An analysis of the disposition of the 1930 cases, which were closed reveals the following:

Total	421
Satisfied by public utility.....	213
Closed by order of Commission.....	143
Withdrawn	28
Transferred to Formal Docket.....	8
Satisfied by order of Commission.....	15
Not satisfied	14

(2) THE INFORMAL DOCKET

At present, the distinction between the Correspondence and the Informal Docket is perfectly clear. Cases which are instituted by, and conducted by, correspondence are carried on the Correspondence Docket; cases which come in by telephone, or by personal calls are carried on the Informal Docket. But, as already indicated, for the years from 1915 to 1921 the Correspondence Docket was discontinued and its business carried on the Informal Docket. Prior to 1924, the records of the Informal Docket were not so well kept as they are at present, and accurate data are not, therefore, available.

Based on the annual reports of the Commission, however, there are approximately 4150 cases included on the Informal Docket. The number of cases listed by years as found in the annual reports is as follows:

Total	4150
1915	123
1916	275
1917	319
1918	576
1919	562
1920	622
1924	290
1925	267
1926	280
1927	246
1928	221
1929	199
1930	170

The lapse between 1920 and 1924 was taken care of by entering cases on the Correspondence Docket. Since the cases on the Informal Docket for the earlier years were not so well kept as for the later years, the detailed analysis has been made, only for the years from 1924-1930.

The following analysis is based on the years in which the cases were closed. Although the number of these cases shown in the published reports is 1673, the actual count amounts to 1699, a difference of 26. This difference may be due either to an error in the count, or in the published record.

YEAR	TOTAL	TYPES OF CASES		
		Rate	Services	All Other
TOTAL.....	1699	477	1138	84
1924.....	279	75	195	9
1925.....	280	45	214	21
1926.....	286	68	209	9
1927.....	243	88	148	7
1928.....	232	62	168	2
1929.....	215	73	127	15
1930.....	164	66	77	21

Here, again, the predominance of complaints involving service, compared to those involving rates is evident. The ratio for the totals is almost the same as in the Correspondence Docket.

The proportion of these cases which refer to the three principal utilities in Baltimore City is even greater than on the Correspondence Docket.

Total	1274
Chesapeake & Potomac Telephone Company	534
United Railways & Electric Company.....	189
Consolidated Gas, Elec. Light & Power Co.	551

The large increase in the gas company cases on this docket as compared to the Correspondence Docket is particularly noticeable.

An analysis of the 164 cases disposed of in 1930 shows that only six were more than three months old, ten between two and three months old, thirty-one between one and two months old, and the balance of one hundred and seventeen less than one month old.

TYPE OF CASE	TOTAL	THREE PRINCIPAL UTILITIES		
		C. & P. Tel. Co.	United Rwys.	Cons. Gas
TOTAL.....	1274	534	189	551
Rates.....	377	124	16	237
Service.....	897	410	173	314

SUMMARY

There are, therefore, 3,994 complaints regarding rates and services on the Correspondence Docket, and for the years from 1924 to 1930, 1615 such cases on the Informal Docket. For the years from 1915 to 1920 there were, according to the published reports, 2467 additional cases on the Informal Docket. If an allowance of 5% is made for miscellaneous matters included in this last count, the number would be reduced to 2343. One also estimates with regard to these cases that 70%, or 1640, concerned service, and 30%, or 703, concerned rates. If one uses an estimate of 75% one may assume that 1757 of these cases were filed against the three principal public utilities of Baltimore City. This estimate is fair because it is based on the ratio prevailing on the Informal Docket for the years from 1924 to 1930, and the relative importance of these three public utilities measured by the number of cases of this nature was less during these years than for the preceding years.^{1a}

In conclusion, it is found, therefore, that the Commission has dealt with approximately 7950 informal or petty complaints concerning rates and service. Of these about 2350 dealt with rates, and 5600 with service. Of the entire number of cases approximately 5000 concerned the three principal public utilities of Baltimore City. There remain approximately one thousand cases on these dockets which relate to miscellaneous matters filed by the Commission.

In the five year period, from 1926 to 1930, these petty complaints totaled 2,636 cases. This number is approximately one-third of the total cases estimated for the entire twenty year period. For this five year period, the annual average number of these cases was 527.

^{1a} This statement is based on a detailed analysis of the Correspondence Docket.

II. THE SHORT NOTICE AND REPARATIONS (S. N. & R.) DOCKET

The types of cases, which are included on the S. N. & R. docket are based on two provisions of the Public Service Commission Law.

(a) Public utilities are prohibited from making any changes in their tariff schedules in respect of any rates or service except after notice to the Commission and publication for thirty days. The Commission may, however, dispense with the requirement as to thirty days' notice and permit the change to go into effect within a shorter period.² These are the "Short Notice Cases."

(b) Public utilities are prohibited from making any refunds or in any way reducing the charges specified on their published schedules.³ In cases in which an error has occurred and a consumer has been charged an erroneous or illegal rate, the public utility and the consumer may jointly petition the Commission to permit a refund of this overcharge. The petition must set forth the reason for the rebate. These are "Reparation Cases," and must be distinguished from ordinary disputes between carriers and shippers concerning rates. The concurrence of the shipper and the carrier is essential in order for the Commission to have jurisdiction.⁴

As is obvious from the nature of these provisions in the law, cases of this type are of particular importance with regard to common carriers, (steam roads and electric railways). The following is a summary of the S. N. & R. Docket, which sets forth the types of public utilities which were parties in these two types of cases before the Commission, and also of the individual public utilities involved:

The S. N. & R. Docket was not established as a separate docket until 1913; prior to that time, cases of these types were, therefore, entered on the Formal Docket. Altogether, one hundred and fifty-five of these cases were entered on the Formal Docket: one hundred and twenty-seven short notice cases and twenty-eight reparations cases. One short notice case was entered on the Formal Docket even after the S. N. & R. Docket was established.

² *Laws of Md.*, 1910, Ch. 180, Sec. 15; *An. Code, P. G. L.*, 1924, Art. 23, Sec. 364.

³ *Laws of Md.*, 1910, Ch. 180, Sec. 16; *An. Code, P. G. L.*, 1924, Art. 23, Sec. 365.

⁴ *P. S. C. Md.*, VI, pp. 360, 376.

	TOTAL CASES	TYPES OF CASES	
		Reparations Cases	Short Notice Cases
TOTAL CASES.....	1167	189	978
TYPE OF PUBLIC UTILITY			
Steam Roads.....	923	170	753
Electric Railways.....	76	1	75
Electric Light Companies.....	27	.....	27
Gas Companies.....	24	.....	24
Electric & Gas Companies.....	14	.....	14
Steamboat Companies.....	32	.....	32
Operators of Motor Vehicles.....	22	.....	22
All Other.....	49	18	31
PUBLIC UTILITY			
Baltimore & Ohio R. R. Co.....	329	75	254
Pennsylvania R. R.....	202	41	161
Western Md. Rwy.....	114	26	88
All Other Steam Roads Operating in Md..	138	.....	138
Baltimore Chesapeake & Atlantic.....	54	4	50
Washington, Balto. & Annapolis.....	37	5	32
All Other.....	293	38	255

For the purpose of completeness, data concerning the reparations and short notice cases on the Formal Docket will be shown here together with those on the S. N. & R. Docket, although some repetition is involved in this plan.

The following is a summary of the bases on which the petitions in the short notice cases were filed:

BASIS OF PETITION	TOTAL	S. N. & R. DOCKET	FORMAL DOCKET
TOTAL.....	1105	978	127
To Establish Rates.....	381	327	54
To Correct Clerical or Typographical Error.....	128	120	8
Reducing Rates.....	183	164	19
Cancelling Rates.....	81	66	15
Changing Rates.....	173	161	12
Extending Effective Date.....	36	30	6
Changing Schedule of Service and All Other.....	123	110	13

The following is a summary of the number of days within which the schedule change was requested to take effect. With the exception of the two cases discussed below, these petitions were granted.

NUMBER OF DAYS	TOTAL	S. N. & R. DOCKET	FORMAL DOCKET
TOTAL.....	1105	978	127
Same Day.....	31	27	4
1 Day.....	885	795	90
2 Days.....	7	3	4
3 Days.....	48	39	9
5 Days.....	72	66	6
10 Days.....	35	27	8
30 Days.....	13	13	.....
All Other.....	14	8	6

By far, the largest single group of cases concern the establishment of a rate where none had been provided. The change, or the establishment of a new rate, generally takes place on one day's notice. The law does not require that the Commission grant permission to establish a new rate, but the practice of obtaining permission has become customary.

The principal types of reparations cases may be grouped under four headings, according to the basis of the petition for refund, as follows:

BASIS OF PETITION	TOTAL	S. N. & R. DOCKET	FORMAL DOCKET
TOTAL.....	217	189	28
On account of subsequently established rate.....	175	157	18
"Short Haul" rule violated.....	18	14	4
Error in fixing rate.....	11	5	6
Negligence resulting in loss to shipper....	10	10	.....
All Other.....	3	3	.....

The largest group of cases are those in which refunds are permitted because the rate charged was more than the legal rate at the time the shipment was made. The correct or legal rate was issued shortly after the charge was made, but this was the rate which should have governed. The orders of the Commission, in these cases, give the details of the original charge, the reason for the allowance, and the basis on which the allowance is determined. The amounts involved in these cases are generally not very large.

AMOUNT	TOTAL	S. N. & R. DOCKET	FORMAL DOCKET
TOTAL.....	217	189	28
*\$100 or Less.....	160	138	22
\$101 to \$200.....	20	18	2
\$201 to \$300.....	12	12	.....
\$301 to \$400.....	6	4	2
\$401 to \$500.....	3	2	1
\$501 to \$600.....	4	4	.....
\$601 to \$700.....	3	2	1
\$701 to \$800.....	1	1	.....
\$801 to \$900.....	1	1	.....
\$901 to \$1000.....	3	3	.....
Over \$1000.....	4	4	.....
*Detail for this class—TOTAL CASES.....	160	138	22
\$25 or Less.....	73	61	12
\$26 to \$50.....	43	36	7
\$51 to \$75.....	28	25	3
\$76 to \$100.....	16	16	.....

The median for these reparations cases falls at about forty-six dollars (\$46). The weighted average for these cases, even if we exclude all which involve over one thousand dollars is, however, approximately one hundred and ten dollars (\$110).

The cases on the S. N. & R. Docket are generally disposed of promptly by the Commission. All but two of the reparations cases were closed, and the petitions granted by orders on the day on which they were filed. No hearings were required in any of these cases. Among the short notice cases, all but sixteen were closed on the day filed. Two cases were set down for hearing, and in one of these, which involved switching rates, the Commission wrote a fairly lengthy opinion.⁵

All but two of the petitions for changing schedules on short notice were granted. One petition was dismissed, after hearing, on the merits of the case, and one for failure to prosecute.

Even those cases, which were not disposed of immediately, were closed within a short period of the date on which they were filed. The short notice case in which the Commission filed an opinion occupied approximately five months, but all others were closed in less than fifteen days. Among the reparations cases, one occupied about one month, and one occupied about two.

In ten of the short notice cases the Commission modified its original orders.

⁵ *Ibid.*, p. 48.

III. THE FORMAL DOCKET

In the preparation of the original data sheet for analyzing the cases on the Formal Docket about a hundred types of cases were distinguished. After the data were assembled, it was found, however, that many of these classifications could be eliminated or combined. It was also found that for the purpose of presenting most of the data assembled, the cases had to be treated according to major types and not according to each subsidiary class. Twelve major types were, therefore, selected and the detailed data were grouped under these headings.

Likewise, it appeared that if the data were presented for each year from 1910 to 1930, the detail would be too intricate for a clear view of the major trends and groupings. From the point of view of time intervals, therefore, four major periods were established: from 1910 to 1915, from 1916 to 1920, from 1921 to 1925, and from 1926 to 1930. The three latter periods are for five years each, whereas, the first period includes eight months of the year 1910. This division is purely arbitrary.

The most exhaustive analysis of the work of the Commission has been applied to the Formal Docket. From the time that the Commission began to function until the end of 1930, three thousand, one hundred and eighty-three cases were filed on this docket. All of these cases have been analyzed. Prior to the establishment of the S. N. & R. Docket in 1913, short notice and reparations cases were entered on the Formal Docket. A group of cases, which helps to swell the volume of the Formal Docket, are those classified as "others" under the general heading of "Miscellaneous." There are one hundred and five such cases, and they include petitions for extending the time for filing annual reports, changes in the hours of labor, and miscellaneous inquiries.

The purpose of the analysis of this docket was to obtain a body of statistical information concerning the cases filed on it. Concerning these cases, information has been accumulated and classified in tables according to the major types of cases and the major time periods, and these tables deal principally with the following data:

- | | |
|------------|--|
| Table I. | Major and detailed types of cases. |
| Table II. | Types of utilities as parties to cases. |
| Table III. | Public service corporations as parties to cases. |

Table IV.	The civil status of applicants in motor vehicle cases.
Table V.	The civil status of complainants in complaint cases.
Table VI.	Disposition of cases.
Table VII.	Time intervals from date case filed to date of closing order—no hearings held.
Table VIII.	Time intervals from date case filed to date of closing order—hearings held.
Table IX.	Time intervals from date case filed to date hearings begun.
Table X.	Time intervals from date hearings begun to date hearings ended.
Table XI.	Time intervals from date hearings ended to date of closing order.
Table XII.	Time intervals from date of closing order to date of last supplementary order.
Table XIII.	Witnesses presented at hearings.
Table XIV.	Appearances by counsel at hearings.
Table XV.	Size of stenographer's record.
Table XVI.	Protests filed.
Table XVII.	Opinions filed.

All of the cases have been classified according to the period within which they were filed, and all of the tables cover the history of the Commission from its beginning on May 1, 1910, down to the end of 1930. The examination of these cases was made in the spring and summer of 1931, and, whenever the case was completed at the time of the examination, all the data have been included. This information is presented in the seventeen tables which follow. In a few cases, however, the available data were incomplete.

TABLE I.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE: BY MAJOR TYPE OF CASE, BY MAJOR PERIODS, AND ALSO SUPPORTING TABLES FOR EACH MAJOR TYPE OF CASE

SUPPORTING TABLE	MAJOR TYPE OF CASE	TOTAL CASES 1910 TO 1930	MAJOR PERIODS				
			1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	
	TOTAL CASES	3183	1013	861	567	742	
I-A	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	609	161	129	184	135	
I-B	Constructing Equipment, Acquiring Property, etc.	686	199	98	139	250	
I-C	Abandonment of Property Rights, Franchise, etc.	117	12	42	23	40	
I-D	Complaints	651	373	183	39	56	
I-E	Ex-parte Proceedings by Commission	58	33	9	3	13	
I-F	Rate and Tariff Cases	40	9	23	6	2	
I-G	Motor Vehicle Cases	213	.....	49	51	113	
I-H	Reparation Cases	28	.....	.....	.....	.....	
I-I	Short Notice Cases	127	126	1	.....	.....	
I-J	Sale of, and Joint Ownership of Poles	452	5	237	103	107	
I-K	Construction and Removal of Sidings	67	32	28	3	4	
I-L	Miscellaneous	135	35	62	16	22	
	TOTAL CASES	609	161	129	184	135	
	TYPE OF CASE						
	TOTAL CASES	421	88	101	138	94	
	Issuing Securities	62	31	7	13	11	
	Issuing Securities, Constructing Equipment, Extending Service	6	6	.....	.....	.....	
	Issuing Securities, Constructing Equipment	22	2	4	10	6	
	Issuing Securities, Acquiring Securities of Other Utilities	50	20	14	9	7	
	Issuing Securities, Acquiring Properties of Other Utilities	16	7	.....	5	4	
	Issuing Securities, Executing Mortgage	13	.....	2	3	8	
	Issuing Securities, Securities Acquired by Other Utilities	19	7	1	6	5	
	All Other	.....	.....	.....	.....	.....	

TABLE I-A.—Issuing Securities, Constructing Equipment, Acquiring Property

PUBLIC SERVICE COMMISSION OF MARYLAND

TABLE I.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE: BY MAJOR TYPE OF CASE, BY MAJOR PERIODS, AND ALSO SUPPORTING TABLES FOR EACH MAJOR TYPE OF CASE.—Continued

TYPE OF CASE	TOTAL CASES 1910 TO 1930	MAJOR PERIODS			
		1910 1915	1916 to 1920	1921 to 1925	1926 to 1930
TABLE I-B—Constructing Equipment, Acquiring Property, etc.					
TOTAL CASES.....	686	199	98	139	250
Constructing Equipment and Extending Service.....					
Constructing Equipment.....	329	115	58	66	90
Acquiring Securities of Other Utilities.....	153	34	13	16	90
Acquiring Property of Other Utilities.....	85	17	8	23	37
All Other.....	102	25	15	32	30
	17	8	4	2	3
TABLE I-C—Abandonment of Property, Rights, Franchise, etc.					
TOTAL CASES.....	117	12	42	23	40
Abandonment of Service and Removal of Equipment.....					
Sale of Franchise and Property.....	50	1	26	11	12
Transfer of All of Property and Exercise of Franchise by Transferee.....	11	5	2	3	1
Transfer of Part of Property.....	29	2	5	8	14
Abandonment and Discontinuance of Franchise.....	13	1	2	1	9
All Other.....	9	2	4	.....	3
	5	1	3	.....	1
TABLE I-D—Complaints					
TOTAL CASES.....	651	373	183	39	56
Price of Service.....					
Adequacy, Quality and Safety of Service.....	273	142	89	23	19
Price and Adequacy of Service.....	337	205	83	16	33
All Other.....	16	11	5	.....	.....
	25	15	6	.....	4

TABLE I-E—Ex-parte Proceedings by Commission

TOTAL CASES.....	58	33	9	3	13
Investigation of Services Furnished.....	14	10	3	.....	1
Investigation of Rates, Charges and Affairs of Utilities.....	14	3	3	2	6
Investigation of Accidents.....	6	6	.....	.....	.....
Miscellaneous Regulations.....	17	9	2	.....	6
All Other.....	7	5	1	1	.....
TOTAL I-F—Rate and Tariff Cases					
TOTAL CASES.....	40	9	23	6	2
Rate and Valuation Cases.....	12	1	8	2	1
Schedule Changes—Service.....	3	1	.....	1	1
Schedule Changes—Rates.....	22	6	13	3	.....
All Other.....	3	1	2	.....	.....
TOTAL I-G—Motor Vehicle Cases					
TOTAL CASES.....	213	.....	49	51	113
Application for Permit to Operate Motor Vehicle, Freight.....	89	.....	6	14	69
Application for Permit to Operate Motor Vehicle, Passenger.....	111	.....	33	37	41
Revocation of Permit to Operate Motor Vehicle.....	5	.....	4	.....	1
All Other.....	8	.....	6	.....	2
TOTAL I-H—Reparations Cases					
TOTAL CASES.....	28	28	.....	.....	.....
On Account of Subsequently Established Rates.....	18	18	.....	.....	.....
“Short Haul” Rule Violated.....	4	4	.....	.....	.....
Error in Fixing Rate.....	6	6	.....	.....	.....

PUBLIC SERVICE COMMISSION OF MARYLAND

TABLE 1.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE; BY MAJOR TYPE OF CASE, BY MAJOR PERIODS, AND ALSO SUPPORTING TABLES FOR EACH MAJOR TYPE OF CASE—Continued

TYPE OF CASE	TOTAL CASES 1910 TO 1930	MAJOR PERIODS			
		1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930
TABLE I-I—Short Notice Cases					
TOTAL CASES.....	127	126	1	.....	.....
To Establish Rate.....	54	54	.....	.....	.....
To Correct Typographical or Clerical Error.....	8	8	.....	.....	.....
Reducing Rates.....	19	19	.....	.....	.....
Cancelling Rates.....	15	15	.....	.....	.....
Changing Rates.....	12	11	1	.....	.....
Extending Effective Date.....	6	6	.....	.....	.....
All Other.....	13	13	.....	.....	.....
TABLE I-J—Sale of, and Joint Ownership of Poles					
TOTAL CASES.....	452	5	237	103	107
Sale of Poles.....	374	1	205	88	80
Joint Ownership of Poles.....	78	4	32	15	27
TABLE I-K—Sidings Cases					
Constructing and Removing Sidings.....	67	32	28	3	4
TABLE I-L—Miscellaneous Cases					
TOTAL CASES.....	135	35	62	16	22
Change from Agency to Non-Agency Station.....	24	.....	8	8	8
Restraining Extension of Service and/or Equipment.....	4	2	.....	1	1
Change from Electric Railways to Motors.....	2	.....	.....	.....	2
All Other.....	105	33	54	7	11

TABLE II.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE; BY TYPE OF UTILITY, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

TYPE OF UTILITY	MAJOR PERIODS				MAJOR TYPES OF CASES												
	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous		
	TOTAL CASES	1013	861	567	742	609	686	117	651	58	40	213	28	127	452	67	135
Steam Railroads	553	348	112	50	43	95	63	7	155	10	2	94	26	94	...	57	44
Electric Railways	451	183	129	79	60	89	125	25	147	12	9	15	1	9	...	17	6
Electric Light Companies	386	62	51	98	175	123	176	22	47	3	4	2	...	1	...	...	...
Gas Companies	77	14	11	26	26	23	26	4	22	2	...	...	...	...	...	...	...
Electric & Gas Companies	281	70	57	54	100	76	94	6	62	6	6	...	...	...	...	...	...
Water Companies	215	86	84	24	21	58	30	3	102	8	8	2	...	...	...	...	...
Telephone Companies	248	149	59	20	20	7	124	8	59	3	4	...	...	...	...	...	...
Telegraph Companies	12	8	3	1	...	...	1	2	5	2	...	...	...	...	...	...	...
Express Companies	26	17	4	3	2	5	3	1	9	1	2	1	...	...	...	...	...
Steamboat Companies	46	18	11	10	7	15	9	6	...	...	...	...	...	...	...	...	...
Sleeping Car Companies	3	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Bridge Companies	6	...	2	1	3	...	3	...	...	1	1	...	...	...	...	...	...
Miscellaneous Public Utilities	13	3	7	2	1	6	...	3	...	...	...	...	...	...	...	...	...
Taxicab Companies	19	3	2	5	9	14	2	...	...	3	...	...	...	...	...	...	...
Operators of Motor Vehicles	302	22	86	64	130	47	5	25	...	3	2	204	...	...	...	...	...
Municipalities	18	3	5	4	6	4	10	...	...	1	...	1	...	...	...	...	...
Sundry Commissions	38	...	2	18	18	32	2	...	...	...	...	...	...	...	...	...	...
Miscellaneous Utilities, etc.	10	...	...	7	3	9	1	...	...	...	...	...	...	...	...	...	...
Telephone and Electric & Gas Companies	247	...	126	62	59	...	...	...	...	...	...	...	...	...	246	...	1
Telephone Companies and Municipalities	35	1	25	1	8	...	...	...	...	...	...	...	...	...	34	...	1
Other Combinations	160	13	78	32	37	1	1	4	...	...	...	...	1	...	137	...	7
All Other	37	10	7	6	14	5	11	1	8	3	2	3	...	...	2	...	2

PUBLIC SERVICE COMMISSION OF MARYLAND

TABLE III.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE: BY PUBLIC SERVICE CORPORATION AND BY MAJOR TYPES OF CASES

PUBLIC SERVICE CORPORATION	MAJOR TYPES OF CASES												
	TOTAL CASES	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Constructing Equipment, Acquiring Property, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous
TOTAL CASES.....	3183	609	686	117	651	58	40	213	28	127	452	67	135
Baltimore & Ohio Railroad Company.....	122	26	8	2	36	3	.....	.....	11	40	.....	.....	4
Pennsylvania Railroad Company.....	77	1	4	2	27	.....	.....	.....	3	12	.....	1	23
Western Maryland Railway.....	77	25	4	.....	24	3	.....	.....	2	16	.....	.....	3
Washington, Baltimore & Annapolis.....	72	19	12	1	15	1	1	1	2	10	.....	8	10
United Railways.....	227	14	81	10	95	10	4	4	.....	3	.....	.....	23
C. & P. Telephone Company.....	362	6	119	4	49	1	2	.....	.....	2	156	.....	11
Cons. Gas, El. Lt. & Pr. Co.....	184	42	40	6	48	2	4	.....	.....	1	30	.....	2
Combinations with United, C. & P. Tel. & Cons. Gas	256	.....	.....	.....	.....	.....	.....	.....	.....	.....	254	.....	.....
Baltimore Co. Water & Electric Co.....	43	4	1	.....	34	1	1	.....	.....	.....	.....	.....	2
Potomac Edison Co.....	40	12	17	3	1	1	1	.....	.....	.....	1	.....	2
Tolchester Steamship Co.....	32	2	.....	.....	29	.....	.....	.....	.....	.....	.....	.....	3
All Other.....	1691	458	404	89	293	36	27	213	10	42	11	57	51

TABLE IV.—APPLICANTS IN MOTOR VEHICLE CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE: BY CIVIL STATUS OF APPLICANTS FOR PERMITS TO OPERATE MOTOR VEHICLES

CIVIL STATUS	
TOTAL APPLICANTS.....	213
Corporations.....	72
Partnerships.....	15
Individuals.....	108
Public Utilities.....	5
Civic Bodies.....	1
All Other.....	12

TABLE V.—COMPLAINANTS IN COMPLAINTS FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE: BY CIVIL STATUS OF COMPLAINANTS

CIVIL STATUS	
TOTAL COMPLAINANTS.....	651
Corporations.....	82
Partnerships.....	18
Individuals.....	217
Municipalities.....	57
Public Utilities.....	11
Civic Bodies.....	59
Public Service Commission.....	17
Unorganized Groups.....	159
All Other.....	31

TABLE VII.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH NO HEARINGS WERE HELD: BY TIME INTERVAL ELAPSING FROM DATE CASE FILED TO DATE OF CLOSING ORDER, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

TIME INTERVAL	MAJOR PERIODS					MAJOR TYPES OF CASES												
	TOTAL CASES	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Constructing Equipment, Acquiring Property, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous	
		521	372	135	138	35	172	19	216	19	10	17	28	127	411	62	50	
TOTAL CASES.....	1166	671	189	258	113	111	1	31	4	2	1	3	...	22	112	410	53	32
Same Day.....	168	126	29	3	10	19	90	6	10	2	...	8	4	12	1	4	12	4
*16 Days to 1 Year 15 Days.....	244	153	68	9	14	13	50	7	137	7	7	9	2	3	...	5	4	2
1 Year 16 Days to 2 Years 15 Days.....	47	32	9	3	3	2	1	1	38	3	...	...	...	...	...	...	2	2
2 Years 16 Days to 3 Years 15 Days.....	21	13	3	5	...	...	...	1	16	4	...	...	...	...	...	...	...	...
Over 3 Years 15 Days.....	15	8	5	2	...	...	...	...	13	2	...	...	...	...	...	...	...	...
*Details for this Class—TOTAL CASES.....	244	153	68	9	14	13	50	7	137	7	7	9	2	3	...	5	4	4
16 Days to 1 Month 15 Days.....	99	75	14	4	6	9	44	2	31	1	2	4	...	3	...	2	1	1
1 Month 16 Days to 2 Months 15 Days.....	34	16	15	...	3	2	1	2	22	1	1	2	2	...	...	1	...	...
2 Months 16 Days to 3 Months 15 Days.....	25	16	6	2	1	1	2	2	17	2	...	...	...	...	...	1	...	...
3 Months 16 Days to 4 Months 15 Days.....	15	6	9	...	...	...	1	1	9	...	1	1	...	...	...	...	2	2
4 Months 16 Days to 5 Months 15 Days.....	15	9	4	1	1	...	1	...	13	...	...	...	...	...	...	1	...	...
5 Months 16 Days to 6 Months 15 Days.....	17	10	6	...	1	...	...	...	13	1	3	...	...	...	...	...	...	...
6 Months 16 Days to 7 Months 15 Days.....	14	8	4	1	1	1	...	...	12	...	...	1	...	...	...	...	...	...
7 Months 16 Days to 8 Months 15 Days.....	7	5	3	...	...	...	1	...	4	2	...	...	...	...	...	...	1	1
8 Months 16 Days to 9 Months 15 Days.....	8	5	3	1	...	...	...	...	5	...	...	...	...	...	...	...	...	...
9 Months 16 Days to 10 Months 15 Days.....	5	1	3	1	...	...	...	...	3	...	...	1	...	...	...	...	...	...
10 Months 16 Days to 11 Months 15 Days.....	9	4	1	3	...	...	...	...	4	...	...	...	...	...	...	...	...	...
11 Months 16 Days to 12 Months 15 Days.....	4	4	2	1	...	...	...	...	4	...	...	...	...	...	...	...	...	...
Median in Days—Approximate.....	...	8½	...	...	...	14	9	15	153	250	40	22	...	...	...	...	...	...

PUBLIC SERVICE COMMISSION OF MARYLAND

TABLE VIII.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH HEARINGS WERE HELD: BY TIME INTERVAL ELAPSING FROM DATE CASE FILED TO DATE OF CLOSING ORDER, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

TIME INTERVAL	MAJOR PERIODS					MAJOR TYPES OF CASES											
	TOTAL CASES	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	Leasing Securities, Constructing Equipment, Acquiring Property, etc.	Abandonment of Property Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Removal and Reconstruction of Sidings	Miscellaneous	
TOTAL CASES.....	1895	413	476	421	585	564	507	97	358	29	29	193	...	40	5	73	
Less than 16 Days.....	865	94	206	270	295	355	321	52	10	...	1	61	...	21	1	43	
*16 Days to 1 Year 15 Days.....	945	272	252	140	281	199	182	42	297	21	23	130	...	19	4	28	
1 Year 16 Days to 2 Years 15 Days.....	44	24	8	3	9	3	2	...	31	2	2	2	...	...	...	2	
2 Years 16 Days to 3 Years 15 Days.....	20	10	5	5	...	4	...	2	10	2	2	...	...	...	...	...	
Over 3 Years 15 Days.....	21	13	5	3	...	3	2	1	10	4	1	...	...	...	...	...	
*Detail for this Class—TOTAL CASES.....	945	272	252	140	281	199	182	42	297	21	23	130	...	19	4	28	
16 Days to 1 Month 15 Days.....	482	92	124	86	180	135	137	30	60	1	10	78	...	18	4	9	
1 Month 16 Days to 2 Months 15 Days.....	129	44	29	20	36	22	14	7	55	6	...	15	...	1	...	9	
2 Months 16 Days to 3 Months 15 Days.....	91	35	26	11	19	16	10	2	42	3	1	15	...	...	...	2	
3 Months 16 Days to 4 Months 15 Days.....	71	31	23	3	14	8	6	2	45	1	1	7	...	...	...	1	
4 Months 16 Days to 5 Months 15 Days.....	45	18	17	4	6	4	5	1	28	1	2	4	...	...	...	...	
5 Months 16 Days to 6 Months 15 Days.....	41	12	9	6	14	3	6	...	19	2	2	7	...	...	...	2	
6 Months 16 Days to 7 Months 15 Days.....	31	13	10	3	5	5	2	...	18	2	2	...	...	...	...	2	
7 Months 16 Days to 8 Months 15 Days.....	15	6	3	1	5	3	1	...	4	2	2	1	...	...	...	2	
8 Months 16 Days to 9 Months 15 Days.....	7	4	2	...	1	...	...	...	2	3	...	2	...	...	...	...	
9 Months 16 Days to 10 Months 15 Days.....	8	6	1	1	...	...	...	...	7	...	1	2	...	...	...	...	
10 Months 16 Days to 11 Months 15 Days.....	14	5	5	4	...	...	1	...	10	...	1	1	...	...	...	1	
11 Months 16 Days to 12 Months 15 Days.....	11	6	3	1	1	3	...	...	7	...	1	...	...	...	...	...	
Median in Days—Approximate.....	21	60	24	12	15	12	12	14	114	208	160	30	...	15	40	13	

TABLE IX.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH HEARINGS WERE HELD: BY TIME INTERVAL ELAPSING FROM DATE CASE FILED TO DATE HEARING BEGUN, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

TIME INTERVAL	MAJOR PERIODS					MAJOR TYPES OF CASES											
	TOTAL CASES	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Constructing Equipment, Acquiring Property, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous
		1919	426	480	422	591	570	510	98	367	31	29	193	...	...	40	5	76
TOTAL CASES.....	1919	426	480	422	591	570	510	98	367	31	29	193	...	...	40	5	76
Same Day.....	17	7	6	3	1	7	...	...	1	3	1	5	...	...	...	...	...
Less than 16 Days.....	1135	131	268	340	396	446	384	68	27	7	4	131	...	...	21	1	46
*16 Days to 1 Year 15 Days.....	749	280	205	76	188	116	126	30	329	19	22	54	...	...	19	4	30
1 Year 16 Days to 2 Years 15 Days.....	13	4	1	2	6	1	...	...	8	2	...	2	...	...	...	...	...
2 Years 16 Days to 3 Years 15 Days.....	2	1	...	1	...	...	...	...	1	...	1	1	...	...	...	...	...
Over 3 Years 15 Days.....	3	3	...	...	...	...	...	...	1	...	1	1	...	...	...	...	...
*Detail for this Class—TOTAL CASES.....	749	280	205	76	188	116	126	30	329	19	22	54	...	...	19	4	30
16 Days to 1 Month 15 Days.....	518	163	130	62	163	106	117	26	161	9	8	48	...	...	18	4	21
1 Month 16 Days to 2 Months 15 Days.....	105	58	30	7	10	5	5	1	76	5	5	2	...	...	1	...	5
2 Months 16 Days to 3 Months 15 Days.....	47	20	15	3	9	1	2	2	34	2	1	3	...	...	...	...	2
3 Months 16 Days to 4 Months 15 Days.....	28	11	15	1	1	1	1	1	19	2	4	...	...	...	...	...	...
4 Months 16 Days to 5 Months 15 Days.....	12	5	5	1	1	1	1	...	11	...	...	...	...	...	...	...	...
5 Months 16 Days to 6 Months 15 Days.....	10	7	1	1	1	...	...	...	9	...	1	...	...	...	...	...	...
6 Months 16 Days to 7 Months 15 Days.....	7	4	2	1	...	3	...	...	3	...	...	...	...	...	...	...	1
7 Months 16 Days to 8 Months 15 Days.....	4	2	2	...	1	...	...	...	2	...	1	1	...	...	...	...	...
8 Months 16 Days to 9 Months 15 Days.....	4	1	2	...	...	...	...	...	2	...	1	...	...	...	...	...	...
9 Months 16 Days to 10 Months 15 Days.....	7	5	1	1	1	...	...	...	7	...	...	...	...	...	...	...	1
10 Months 16 Days to 11 Months 15 Days.....	3	2	1	...	...	...	...	...	3	...	...	...	...	...	...	...	...
11 Months 16 Days to 12 Months 15 Days.....	4	2	1	...	1	...	...	...	2	1	1	...	...	...	...	...	...
Median in Days—Approximate.....	12	30	13	10	11	9	10	11	44	35	57	10	...	...	15	40	12

TABLE XI.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH HEARINGS WERE HELD: BY TIME INTERVAL ELAPSING FROM DATE HEARING ENDED TO DATE OF CLOSING ORDER, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

TIME INTERVAL	MAJOR PERIODS				MAJOR TYPES OF CASES											
	TOTAL CASES	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Abandonment of Property Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous
		415	480	421	586	564	507	97	360	31	29	193			41	5	75
TOTAL CASES.....	1902															
Same Day.....	983	120	262	263	338	352	382	60	62	2	4	40	....	40	5	36
Less than 16 Days.....	381	89	84	81	127	114	61	22	62	3	8	88	....	1	....	23
*16 Days to 1 Year 15 Days.....	493	183	119	70	121	92	61	13	209	23	16	63	....	....	....	15
1 Year 16 Days to 2 Years 15 Days.....	23	12	8	3	8	2	1	....	15	1	1	2	....	....	....	1
2 Years 16 Days to 3 Years 15 Days.....	11	5	3	3	3	2	2	....	5	1	....	....	....	....	....	....
Over 3 Years 15 Days.....	11	6	4	1	....	2	....	....	7	1	....	....	....	....	....	....
*Detail for this Class—TOTAL CASES.....	493	183	119	70	121	92	61	13	209	23	16	63	....	1	....	15
16 Days to 1 Month 15 Days.....	218	72	55	36	55	50	26	10	76	5	9	32	....	1	....	9
1 Month 16 Days to 2 Months 15 Days.....	91	35	24	9	23	18	10	2	41	6	2	10	....	....	....	2
2 Months 16 Days to 3 Months 15 Days.....	61	25	17	3	16	8	9	....	34	1	....	9	....	....	....	....
3 Months 16 Days to 4 Months 15 Days.....	34	14	8	6	6	6	5	....	18	1	3	....	....	....	....	....
4 Months 16 Days to 5 Months 15 Days.....	21	10	4	4	3	1	1	....	12	3	....	2	....	....	....	....
5 Months 16 Days to 6 Months 15 Days.....	28	7	5	5	11	4	5	....	10	1	....	7	....	....	....	....
6 Months 16 Days to 7 Months 15 Days.....	15	10	1	1	3	1	3	....	5	4	1	1	....	....	....	....
7 Months 16 Days to 8 Months 15 Days.....	10	5	1	3	1	2	....	....	4	2	....	....	....	....	....	....
8 Months 16 Days to 9 Months 15 Days.....	3	2	....	1	....	....	....	....	....	....	....	....	....	....	....	....
9 Months 16 Days to 10 Months 15 Days.....	5	1	2	1	1	....	....	....	....	....	....	....	....	....	....	....
10 Months 16 Days to 11 Months 15 Days.....	6	1	2	1	2	....	....	....	....	....	....	....	....	....	....	....
11 Months 16 Days to 12 Months 15 Days.....	1	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....

PUBLIC SERVICE COMMISSION OF MARYLAND

TABLE XII.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH SUPPLEMENTARY ORDERS WERE FILED: BY TIME INTERVAL ELAPSING FROM DATE OF CLOSING ORDER TO DATE OF LAST SUPPLEMENTARY ORDER, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

TIME INTERVAL	MAJOR PERIODS					MAJOR TYPES OF CASES											
	TOTAL CASES	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Constructing Equipment, Acquiring Property, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous
TOTAL CASES.....	139	52	36	13	38	49	17	2	30	11	12	10	.....	1	1	.....	6
Less than 1 Year 15 Days.....	100	37	26	10	27	35	11	1	20	7	10	10	.....	1	1	.....	4
1 Year 16 Days to 2 Years 15 Days.....	13	2	2	1	8	4	4	1	3	.....	.....	.....	.....	.....	.....	.....	1
2 Years 16 Days to 3 Years 15 Days.....	10	4	2	2	2	4	1	.....	4	1	.....	.....	.....	.....	.....	.....	.....
Over 3 Years 15 Days.....	16	9	6	.....	1	6	1	.....	3	3	2	.....	.....	.....	.....	.....	1

TABLE XIII.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH HEARINGS WERE HELD: BY WITNESSES PRESENTED, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

WITNESSES PRESENTED	MAJOR PERIODS				MAJOR TYPES OF CASES													
	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	TOTAL CASES	Issuing Securities, Constructing Equipment, etc.	Acquiring Property, etc.	Constructing Equipment, Acquiring Property, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous
TOTAL CASES.....	409	479	419	591	1898	562	505	98	362	30	29	191	.....	.....	.....	40	5	76
Witnesses for Utility or for Applicant for Per- mit to Operate Motor Vehicle, Only.....	192	312	322	407	1233	531	463	96	21	19	6	15	.....	.....	.....	40	5	37
Witnesses for Above and for Protestants or Consumers, Only.....	34	41	73	149	297	28	40	1	14	5	14	164	.....	.....	.....	.....	.....	31
Witnesses for Utility or for Applicant for Permit to Operate Motor Vehicles and for Complainants, Only.....	181	110	20	28	339	.....	.....	.....	324	.....	5	5	.....	.....	.....	.....	.....	5
All Other Combinations.....	2	16	4	7	29	3	2	1	3	6	4	7	.....	.....	.....	.....	.....	3

*TABLE XIV.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH HEARINGS WERE HELD; BY APPEARANCE OF COUNSEL, BY MAJOR PERIODS AND BY MAJOR TYPES OF CASES, AND SUMMARY BY COUNSEL

APPEARANCE OF COUNSEL	MAJOR PERIODS				MAJOR TYPES OF CASES											
	TOTAL CASES	1910 to 1915	1915 to 1920	1921 to 1925	1926 to 1930	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-Parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous
	1879	406	464	418	591	561	502	96	356	30	29	184	...	40	5	76
Counsel for Utility, Only	1053	169	326	314	244	462	375	68	35	8	4	15	...	40	4	42
Counsel for Utility, and for Complainants	233	143	70	10	10				225	1	3	1	...	...	...	3
Counsel for Utility, and for Complainants, and General Counsel	25	15	8	2	...				23	...	1	...	...	...	...	1
Counsel for Utility, and for Complainants, and People's Counsel	21	...	...	5	16				21	...	...	...	...	...	...	...
Counsel for Utility, and for Consumers or Protestants	171	16	25	56	74	18	29	7	2	3	7	92	...	...	...	13
Counsel for Utility, for Consumers, etc., and General Counsel	31	23	6	2	...	8	2	1	13	1	4	...	...	...	...	2
Counsel for Utility, for Consumers, etc., and People's Counsel	82	...	...	11	71	4	10	3	1	...	2	57	...	...	...	5
Counsel for Utility, and General Counsel	62	39	14	6	3	25	3	1	19	7	7	...	...	...	...	5
Counsel for Utility, and People's Counsel	164	...	...	4	160	44	78	15	12	9	...	1	...	...	...	5
Counsel for Complainants, Only	3	...	3	...	...				1	...	...	1	...	...	...	1
Counsel for Consumers or Protestants, Only	16	...	7	4	5			1	...	...	1	14	...	...	...	1
† All Other Combinations	18	1	5	4	8		5		4	1	...	3	...	...	1	4
SUMMARY																
Counsel for Public Utility	1870	406	460	417	587	561	498	96	354	30	29	181	...	40	5	76
Counsel for Consumers or Protestants	187	16	32	60	79	18	29	8	2	3	8	106	...	...	...	13
Counsel for Complainants	282	158	81	17	26				270	1	4	2	...	...	...	5
People's Counsel	267	...	...	20	247	48	88	18	34	9	2	58	...	...	...	10
General Counsel	118	77	28	10	3	33	5	2	55	8	12	...	...	...	...	3

* Utility in this table includes Applicants for permits to operate Motor Vehicles—and Consumers also include Protestants.

† Analyzed for the Purposes of the Summary.

TABLE XV.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH HEARINGS WERE HELD: BY SIZE OF STENOGRAPHER'S RECORD, BY MAJOR PERIODS, AND BY MAJOR TYPES OF CASES

SIZE OF STENOGRAPHER'S RECORD	MAJOR PERIODS				MAJOR TYPES OF CASES											
	1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930	Issuing Securities, Constructing Equipment, Acquiring Property, etc.	Acquiring Equipment, Franchise, etc.	Abandonment of Property, Rights, Franchise, etc.	Complaints	Ex-parte Proceedings by Commission	Rate and Tariff Cases	Motor Vehicle Cases	Reparation Cases	Short Notice Cases	Sale of, and Joint Ownership of Poles	Construction and Removal of Sidings	Miscellaneous
	TOTAL CASES															
TOTAL CASES.....	1896	408	481	418	589	562	507	98	361	29	29	189	.....	40	5	76
*Less than 100 Pages.....	1605	326	427	381	471	531	480	92	241	11	11	129	.....	40	5	65
100 to 199 Pages.....	147	44	24	10	69	19	11	5	70	5	2	30	.....	.....	.....	5
200 to 299 Pages.....	58	13	11	17	17	5	11	.....	20	.....	2	16	.....	.....	.....	4
300 to 399 Pages.....	26	7	5	3	11	1	3	1	12	1	2	6	.....	.....	.....	.....
400 to 499 Pages.....	18	6	7	2	3	1	.....	.....	9	5	2	.....	.....	.....	.....	.....
500 to 599 Pages.....	16	5	.....	2	9	3	.....	.....	4	.....	1	7	.....	.....	.....	1
600 to 699 Pages.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	2	.....	.....	.....	.....	.....
700 to 799 Pages.....	5	2	.....	1	2	.....	1	.....	1	.....	.....	.....	.....	.....	.....	.....
800 to 899 Pages.....	1	.....	1	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	.....
900 to 999 Pages.....	2	1	.....	.....	1	.....	.....	.....	2	.....	.....	.....	.....	.....	.....	.....
1000 and over.....	18	4	6	2	6	2	1	.....	2	3	9	1	.....	.....	.....	.....
*Detail for this Class—																
TOTAL CASES.....	1605	326	427	381	471	531	480	92	241	11	11	129	.....	40	5	65
Less than 10 Pages.....	558	88	191	164	115	215	236	31	18	.....	.....	6	.....	20	4	28
10 to 19 Pages.....	422	66	103	104	149	171	142	27	23	1	4	23	.....	20	1	10
20 to 29 Pages.....	160	28	40	40	52	51	35	14	32	2	.....	17	.....	.....	.....	9
30 to 39 Pages.....	129	37	29	24	39	36	25	11	36	.....	.....	18	.....	.....	.....	2
40 to 49 Pages.....	94	30	19	14	31	18	17	5	38	.....	.....	10	.....	.....	.....	5
50 to 59 Pages.....	70	23	15	11	21	10	6	1	24	.....	.....	23	.....	.....	.....	3
60 to 69 Pages.....	61	25	9	10	17	8	1	1	29	2	3	10	.....	.....	.....	1
70 to 79 Pages.....	41	12	8	5	16	9	5	1	14	2	.....	7	.....	.....	.....	3
80 to 89 Pages.....	32	8	7	4	13	6	4	.....	13	.....	2	4	.....	.....	.....	3
90 to 99 Pages.....	38	9	6	5	18	5	2	1	14	4	.....	11	.....	.....	.....	1
Median in Pages— Approximate.....	19	36	15	14	26	14	11	17	63	173	280	59	.....	10	5	21

TABLE XVI.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH PROTESTS WERE FILED: BY MAJOR PERIOD AND BY MAJOR TYPE OF CASE, ALSO COMPARED TO TOTAL CASES FILED

	CASES IN WHICH PROTESTS WERE FILED	TOTAL CASES FILED
TOTAL CASES.....	315	3183
MAJOR PERIOD		
1910 to 1915.....	24	1013
1916 to 1920.....	57	861
1921 to 1925.....	78	567
1926 to 1930.....	156	742
MAJOR TYPE OF CASE		
Issuing Securities, Constructing Equipment, Acquiring Property, etc.....	29	609
Constructing Equipment, Acquiring Property, etc.....	45	686
Abandonment of Property, Rights, Franchise, etc.....	15	117
Complaints.....	6	651
Ex-parte Proceedings by Commission.....	4	58
Rate and Tariff Cases.....	19	40
Motor Vehicle Cases.....	170	213
Reparation Cases.....		28
Short Notice Cases.....		127
Sale of, and Joint Ownership of Poles.....		452
Construction and Removal of Sidings.....		67
Miscellaneous.....	27	135

TABLE XVII.—CASES FILED ON THE FORMAL DOCKET OF THE PUBLIC SERVICE COMMISSION OF MARYLAND FOR YEARS 1910 TO 1930, INCLUSIVE, IN WHICH OPINIONS WERE FILED: BY MAJOR PERIOD AND BY MAJOR TYPE OF CASE, ALSO COMPARED TO TOTAL CASES FILED

	CASES IN WHICH OPINIONS WERE FILED	TOTAL CASES FILED
TOTAL CASES.....	246	3183
MAJOR PERIOD		
1910 to 1915.....	150	1013
1916 to 1920.....	44	861
1921 to 1925.....	19	567
1926 to 1930.....	33	742
MAJOR TYPE OF CASE		
Issuing Securities, Constructing Equipment, Acquiring Property, etc.....	36	609
Constructing Equipment, Acquiring Property, etc.....	12	686
Abandonment of Property, Rights, Franchise, etc.....	3	117
Complaints.....	139	651
Ex-parte Proceedings by Commission.....	16	58
Rate and Tariff Cases.....	18	40
Motor Vehicle Cases.....	12	213
Reparation Cases.....		28
Short Notice Cases.....	1	127
Sale of, and Joint Ownership of Poles.....		452
Construction and Removal of Sidings.....		67
Miscellaneous.....	9	135

Table I with its supporting tables is designed to show, in general, the types of cases which are filed with the Commission. The cases are first presented according to the twelve major types selected, classified according to the major time periods. These major groups are supported by detailed tables. The most important trends and facts to be noted in this table are the following:

(a) The decrease in the absolute and relative importance of the complaint cases (Table I-D). Cases of this type are being disposed of more and more on the Informal and the Correspondence Dockets.

(b) The growth of motor vehicle cases (Table I-G). The reason for this trend is self-evident.

(c) The disappearance of reparations and short notice cases (Tables I-H and I-I). After 1913 these cases were entered on the S. N. & R. Docket. One case slipped into the Formal Docket, however, in the second period.

(d) The large number of cases dealing with the sale and joint ownership of poles (Table I-J). These cases are generally disposed of by the Commission in a purely perfunctory manner and their numerical weight is entirely out of proportion to their actual significance.

(e) The decrease in the number of security issue cases (Table I-A) in the last period. This decrease is due in part, at least, to the cessation of applications from railroads for permission to issue securities. This change occurred as the result of the Transportation Act of 1920.

(f) The increase in the number of cases dealing with the construction of equipment and the extension of service (Table I-B). This change is, to a large extent, a reflection of the growth of the electric light and power industry during the last few years. The table in which there is the analysis of the public utilities coming before the Commission also bears out this trend.

(g) The small number of rate and valuation cases. These do not form a special major type. They are included in Table I-E as investigations of rates and services by the Commission, and in Table I-F as arising out of rate and tariff schedules. A few of the complaints in Table I-D also develop into rate and valuation cases. Because of the great importance of these cases as a test of the value of Commission regulation, a separate

chapter has been devoted to this subject. In that Chapter, these cases, which number twenty-six, are analyzed.

(h) The decrease in the number of miscellaneous cases (Table I-L) in the last two periods. Many matters formerly entered as regularly docketed cases are now simply disposed of through the correspondence files of the Commission.

Table II presents all of the cases on the formal docket, classified according to types of utilities as parties to these cases, and bears out some of the trends already noticed on Table I. The decrease in the number of cases involving steam roads is due to the falling off in the number of complaints and to the absence of security issues cases in this class of public utility since 1924. The sharp increase in the number of electric light company cases has already been explained. The cases of electric and gas companies also show an increase in count, but one less marked. There is a decided decrease exhibited in the number of the cases of electric railways. The increase in the number of motor vehicle cases is also striking. The combinations of various types of utilities in a single case occur principally in those cases involving the sale and transfer of poles. The more frequent combinations have been designated, but the less frequent combinations have been grouped together.

The purpose of Table III is to show the concentration of formal cases under a few public service corporations. Ten railroads and public utilities are represented in almost half of the cases which have come before the Commission. Approximately one third of the formal cases concerned the Consolidated Gas, Electric Light and Power Company, the United Railways and Electric Company, and the Chesapeake and Potomac Telephone Company. The transfer and the joint ownership of poles are responsible, however, for about 40% of this total relating to the three public utilities named.

Table IV is interesting for it shows the important part which individuals play in the motor vehicle applications which come before the Commission. Out of 213 cases, the operators were individuals in 108, or more than one-half of the total.

Table V represents the civil status of the complainants in formal cases. The predominating position on this table is maintained by individuals and by unorganized groups, who institute proceedings by gathering a number of signatures and filing an informal petition. A minor part is played by organized bodies such as Chambers of Commerce, and by municipi-

palities. In many instances, after the application or petition is filed, additional individuals or groups enter their appearances as parties to the case.

Table VI shows the disposition of the formal cases. The most striking fact in this table is the large number of cases which is marked "granted." In some types of cases, such as those involving the issuance of securities, the construction and the acquisition of property, reparations, the short notice cases, the sale of, and joint ownership of poles, and the sidings cases, the results are almost universal. The seven types of cases just referred to include 2086 out of the total of 3183 cases. The applications filed in these 2086 cases were granted in 1994 instances, or in more than 95% of the cases. The only large groups in which the petitions or applications were not usually granted were the complaint, and the motor vehicle cases. These two groups together total 864, and the petitions or applications granted in these cases numbered 352, or about 40%. If the 864 complaint and motor vehicle cases were excluded from this table, the remaining 2319 cases would indicate "granted" or "satisfied" in 2190 cases, or 93% of the remainder.

The cases indicating "dismissed on merits" show a high degree of concentration. Of 345 cases "dismissed on merits," about 85%, or 296, relate to the complaints and the motor vehicle cases. These figures indicate, to some extent, how rare genuine controversies are in the cases which come before the Commission, and how these controversies have generally been concentrated in two types of cases.

Tables VII, VIII, IX, X, XI and XII deal with time intervals elapsing in the formal cases. Table VII only deals with those cases in which no hearings were held. Tables No. VIII, IX, X and XI deal only with those cases in which hearings were held, and Table XII applies to all cases. Slight differences which may appear in the totals of the respective columns on Tables VIII, IX, X, and XI are due to incomplete records, or to incomplete information. One fact which stands out in reading these tables is the decided decrease since 1921 in the number of cases in which no hearings were held. The principal group for the years from 1921 to 1930 in which no hearings were held is the sale of, and joint ownership of poles.

The location of the modal class in Table VII is also of interest. After 1915 more than half of the cases were closed on the day filed if no hearing had been held. For the years from 1921

to 1930, 82% of these cases were closed on the day filed, whereas, for the years from 1910 to 1920 only 50% were closed as promptly.

Table VIII is the one over-all table for time intervals in cases in which hearings were held. This table presents the entire time interval from the date the case was filed to the date of the closing order, and indicates the comparatively small number of these cases which continue open on the docket of the Commission for a period longer than one year and sixteen days. Out of a total of 1895 cases which went to hearing and were completed, only 85 continued for more than twelve and one-half months. Eight hundred and sixty-five, or about 45% of these cases, were, in fact, closed out in less than 16 days from the day filed. The two major types of cases, which are most speedily disposed of, are those dealing with security issues, the construction of equipment, the extension of service, and the acquisition of property or securities.

Tables IX, X, and XI are supplementary to Table VIII. They present the detailed break down of the time interval shown in the earlier table. In these tables, the time that a case remains before the Commission has been divided into three supplementary intervals: the time preceding the hearing, the time occupied by the hearing, and the time between the end of the hearing and the promulgation of the closing order. As may be expected, the longest interval is that preceding the hearing. Even this interval, however, is less than 16 days in 60% of the cases which go to hearing, and is between 16 days and two and one-half months in about 33% more.

As to the interval occupied by the hearing, in only 10% of the cases does it extend beyond a single day. This interval, therefore, is not generally significant in contributing to the total time elapsed.

Table XI presents the time intervals between the end of the hearing and the date of the closing order. This interval is very rarely extended, and in no case from 1926 to 1930, did it exceed one year. During the entire ten year period, from 1921 to 1930, out of a total of 1007 cases, the closing order was filed within less than one and one-half months from the end of the hearing in 900 cases, or about 90% of the total. In 601 cases, or about 60%, the order was filed on the same day the hearing closed, and in 208 cases, or 20%, in less than 16 days.

In those cases which have gone to hearing, it is worth noting the increased speed with which cases are dispatched in the lat-

ter years as compared to the earlier. That there is little unnecessary time lost in bringing cases to a hearing is shown in Table IX. The only group in which substantial delays occur in a great number of cases is the complaints.

A special study was made of complaint cases which occupied more than 9 months, 15 days from the date filed until the date of the closing order. Cases going to hearing, as well as those in which no hearings were held, were included. There are one hundred and fifty-three such cases, and they fall into the following major periods:

Total	153
1910 to 1915.....	95
1916 to 1920.....	34
1921 to 1925.....	14
1926 to 1930.....	10

It was also found that these cases were disposed of as follows:

Total	153
Granted	12
Satisfied	46
Dismissed on Merits.....	68
Consolidated	10
Other Disposition	17

The comparatively smaller numbers of these cases in which the complaints were granted and satisfied, and the large numbers in which they were dismissed are significant. These facts indicate, perhaps, that whenever the complainant does not have a substantial case he permits it to be delayed. Perhaps, however, they may be interpreted to mean that the public utilities are thus able to wear out their opponents. The latter conclusion is, however, not a very likely one.

Table XII is merely a summary of the various cases in which the Commission has issued supplementary orders and the time intervals elapsing from the date of the closing order until the date on which the supplementary order was issued. These orders may be issued to vacate, rescind, modify, or set aside the original order, or they may be issued affirming the original order and dismissing a petition to modify or set it aside. They may also be issued in cases which have gone to the courts, and were remanded to the Commission for reconsideration on account of new testimony adduced at the trial. In

some cases, a great number of supplementary orders have been issued, from time to time.

As is evident from the table, changes are made quite promptly, if at all, inasmuch as in over seventy per cent of the cases the last supplementary order was filed within one year and fifteen days of the closing order.

Tables XIII, XIV, and XV apply only to cases in which hearings were held. Slight differences in the totals at the head of the respective columns on these tables may be due to incomplete records, or to the fact that data for all the tables were not available in all cases. In about eighteen cases no counsel appeared for any party.

Table XIII presents the principal line-up of witnesses at the hearings of cases. If complaints and motor vehicle cases were omitted, the result would be that out of the 1343 cases remaining, witnesses appeared for the public utility only in 1197 cases. These 1343 cases are made up principally of cases which concern the issuing of securities, the construction of equipment, the extension of service, the acquisition of securities of other utilities, and the purchase of rights and franchises. The appearance of witnesses on behalf of protestants occurs principally in the motor vehicle cases. These protests are not always filed by the users, however, but may represent the protest of a competing operator. As may be seen on Table XVI, protests were filed in 170 out of the 213 motor vehicle cases, and in at least 164 instances consumers or protestants were present at the hearings. In about ninety per cent of the complaints filed with the Commission, the complainants testified.

Table XIV shows the various combinations of appearances by counsel, and a summary of the interests represented at the hearings. It is interesting to note in all but the complaint and motor vehicle cases, the large number of instances in which counsel appears only for the public utility. The summary added to this table indicates how frequently counsel of each type appears in each group.

The substitution of the People's Counsel for General Counsel, as an active participant in cases before the Commission is clearly revealed in the summary, but this change requires further analysis. Out of the total number of 247 instances in which People's Counsel has appeared in cases instituted from 1926 to 1930, about seventy per cent refer to cases instituted in 1929 and 1930. This change has occurred to a large extent,

therefore, in the last two years of the period referred to, and is due to the activity of the present People's Counsel, John Henry Lewin. This trend is best illustrated by taking the four principal groups of cases, and presenting the appearances of People's Counsel in each group, by years from 1926 to 1930.

SUMMARY—FOUR GROUPS BELOW	TOTAL 1926 TO 1930	YEARS				
		1926	1927	1928	1929	1930
TOTAL CASES.....	554	83	126	98	114	133
Appearances by People's Counsel..... Percentage.....	215 38.80	7 8.43	30 23.81	17 17.35	53 46.49	108 81.20
1. ISSUING SECURITIES, CONSTRUCTING EQUIPMENT, ACQUIRING PROPERTY, ETC.						
TOTAL CASES.....	135	23	37	24	26	25
Appearances by People's Counsel..... Percentage.....	48 35.56	1 4.35	10 27.03	2 8.33	15 57.69	20 80.00
2. CONSTRUCTING EQUIPMENT, ACQUIRING PROPERTY, ETC.						
TOTAL CASES.....	250	34	62	52	53	49
Appearances by People's Counsel..... Percentage.....	88 35.20	2 5.89	11 17.74	10 19.23	22 41.51	43 87.76
3. COMPLAINTS						
TOTAL CASES.....	56	10	12	12	6	16
Appearances by People's Counsel..... Percentage.....	28 50.00	3 30.00	6 50.00	5 41.33	3 50.00	11 68.75
4. MOTOR VEHICLE CASES						
TOTAL CASES.....	113	16	15	10	29	43
Appearances by People's Counsel..... Percentage.....	51 45.13	1 6.25	3 20.00	..... .....	13 44.83	34 79.07

In Table XIV it may also be seen that out of a total of 1159 cases, which relate to security issues, the construction of equipment, and the abandonment of franchises, that counsel appeared for the utility only, in 905, or about 78% of these cases. This percentage is obviously lower because of the record in the 1926 to 1930 period.

Table XV presents the size of the stenographer's record. These records are typewritten double space on pages 8½x11, and ten pages of record will generally represent about as many minutes of actual hearing. There are, of course, many delays which occur in the course of a hearing, which are not reflected on the record. The large volume of exhibits which are frequently submitted are also not included in the record. There is very definitely a tendency in the last few years to return to the longer hearings which prevailed in the earlier years of the Commission's activity.

The brevity of the records in the vast majority of the cases is interesting. Of the total records examined, less than half were more than 20 pages long. Only 18 records were over 1000 pages. This table also bears out the general impression created by the tables which present the disposition of cases, and the appearances of witnesses and counsel. It adds to the conclusion formerly noted, that genuine controversies are rare in cases before the Commission, the further conclusion, that the hearings on the subjects before the Commission are seldom extended.

Table XVI presents a list of the number of cases in which protests are filed, together with a list of all cases filed for the purpose of comparison. By far the greatest number of protests falls in the group of cases involving applications for permission to operate motor vehicles.

The opinions filed as shown on Table XVII represent an interesting trend. Over sixty per cent of all cases in which opinions were filed were instituted between 1910 and 1915, less than twenty-five per cent of cases in which opinions were filed were instituted between 1921 and 1930. It must be borne in mind that the table shows the number of cases in which opinions were filed and not the number of opinions filed. The Commission may, and does, occasionally, file more than one opinion in a single case. These supplementary opinions are generally written in conjunction with proceedings to modify the original orders.

In addition to the statistical analysis applied to all cases on the formal docket, special studies were made of those cases which involved the issuance of securities. The approval of security issues is one of the most important powers vested in the Commission. As already set forth in the chapter dealing with the law, public utilities are permitted to issue securities for a period longer than one year, only if the issue is approved

by the Commission. Furthermore, securities may be issued only for the following purposes: (1) the acquisition of property or the construction or improvement of facilities (2) the discharge or lawful refunding of obligations (3) the reimbursement of surplus funds available out of earnings, which have been expended for improvements, (4) bringing the capitalization of the corporation into conformity with the fair value of its property, as determined by the Commission.

By far the largest number of security issue petitions are based on the construction of equipment or extension of service as the reason for the authorization. An analysis of the 580 orders issued by the Commission, which authorize the issuance of securities indicates that 301 orders were based on the first purpose enumerated above, 92 orders on the second purpose, 91 orders on the first and second purposes combined, 15 orders on the third purpose, 49 orders on the basis of the first three purposes, and 32 orders illustrate other combinations of purposes. It is interesting to note in the analysis of these orders that in only a single instance did the Commission permit a security issue to carry out the fourth purpose. The amount involved was only \$15,000, and the corporation, the La Vale Water Company, was permitted to write up the value of its property for \$15,000 and issue a stock dividend for this amount.

An interesting problem, raised by the wording of the law, is that there is no specific authorization for public utilities to issue securities to finance the purchase of securities of other public utilities. Applications which set this forth as the reason for the security issue were filed in at least twenty-two cases. In acting on these applications, the Commission proceeded on the theory that such issues are permitted on the same ground as the acquisition of property.

The following is a condensed summary, which shows the amount of securities authorized by the Commission in the years 1910 to 1930, by type of security, and by principal utilities. This information was compiled from the published reports of the Commission and the dates refer to the date of the orders, not to the date the case was instituted. In all cases, wherever possible, the par value of stock or bonds has been used. But in sixty-six cases the issuance of common and preferred stocks of no par value was authorized and it was necessary to resort to the amounts actually realized, or, if this information were not available, then to the amount expected

to be realized. In eight cases no data whatever were available on this point. Only even thousands of dollars are presented in the table.

	TOTAL 1910 TO 1930	MAJOR PERIODS			
		1910 to 1915	1916 to 1920	1921 to 1925	1926 to 1930
TOTAL	1,440,804,000	348,680,000	365,459,000	435,574,000	291,091,000
TYPE OF SECURITY					
Preferred Stocks . . .	144,683,000	4,020,000	30,236,000	30,281,000	80,146,000
Common Stocks . . .	366,999,000	70,045,000	90,702,000	131,056,000	75,196,000
Bonds and Notes . . .	929,122,000	274,615,000	244,521,000	274,237,000	135,749,000
PRINCIPAL UTILITY					
Cons. Gas, Electric Light & Power Co.	187,663,000	30,216,000	50,902,000	53,095,000	53,450,000
Chesapeake & Potomac Telephone Co. . . .	34,445,000	.....	14,490,000	6,953,000	13,002,000
United Railways & Electric Co.	37,532,000	3,125,000	18,958,000	10,000,000	5,449,000
All Steam Roads . . .	732,793,000	273,587,000	269,559,000	189,647,000	.....
All Other	448,371,000	41,752,000	11,550,000	175,879,000	219,190,000

The large decrease in the period from 1926 to 1930 is due mainly to three factors: (1) the discontinuance of railroad petitions, on account of the Transportation Act of 1920, (2) electric power financing in the years 1924 and 1925, which was unusually heavy, and (3) the depression beginning in 1929. The growth in the use of preferred stocks, particularly in the last five years is worth noting.

Since 1924, the Commission has had to consider the large securities issues of certain large holding companies, which controlled Maryland public utilities. Among these were The West Penn Electric Company, and Central Public Service Corporation. These corporations have filed applications with the Commission for the approval of securities issues ranging from one million to twenty-five million dollars. The records in these cases are generally less than twenty typewritten pages. One may question the value of considering these cases. They help to swell the amount of securities authorized by the Commission, as may be seen in the steady increase in the amount of "others" in the above schedule, but it is very doubtful whether the Commission could refuse permission in any of these cases. Some slight value may, perhaps, accrue to the public on account of

the publicity attendant on proceedings before the Commission, but even this value is doubtful. Even the contention that the public utilities are more critical of their security issues, because they are subject to examination by a regulatory body, is of doubtful validity.

In many cases, these security issues were merely exchanges between the holding company and a sub-holding company. They bore no relation to the Maryland operating company. In other instances, they involved the sale of large issues, of which only a small part of the proceeds might be expended in Maryland. The approval of these issues merely meant a formal "O. K." by the Commission upon a subject, of which it had very imperfect knowledge, and even more imperfect means of control.

A definite improvement in this situation may be expected from a ruling of the General Counsel to the Commission, in the latter part of 1929. He ruled that the Commission was interested in security issues, only in so far as they affected the functions of utilities operating in Maryland. The Commission was not concerned with the manifold activities of the holding company outside of Maryland, or even with the sale of securities in Maryland, which did not touch the local operating utilities. Under this ruling, the action of the Commission upon these holding company security issues becomes merely a formal, official act, involving no discretion, and professing to exercise no control, except in so far as a Maryland operating utility is directly involved.⁶

Although the above criticisms are most glaringly pertinent in the large issues of holding companies, they are applicable to the entire field of security authorizations.

As a safeguard, however, against what may be omitted at the hearings, the Commission requires that public utilities should specify in their petitions the amounts which they expect to realize from the sale of their securities and the precise purposes to which these proceeds will be applied. Furthermore, after the securities are authorized the Commission requires that the public utility file semi-annual reports, which show the expenditure of the proceeds.

In order to determine the effectiveness of these regulations, a considerable portion of the data in these cases were examined in detail for the years from 1926 to 1930. It was found that in more than half of the petitions the purposes for which the securities

⁶ *Ibid.*, XX pp. 331-336.

were to be issued were only stated generally, the applicant using the wording of the statute, and no more. In only forty per cent of these applications was there any information as to the amount expected to be realized from the sale of the securities.

The ruling of the General Counsel, referred to above, also condemns this practice, by the utility, of merely presenting in general terms, the purposes of its security issues. The regulations of the Commission are very definite as to what the petition should contain, but in practice the rules have not been uniformly insisted upon.

This analysis was also followed up by a study of the semi-annual reports filed on security issues. Here a decided improvement is noticeable. Whereas, for the years 1926, 1927, and 1928, these reports were filed promptly in only half of the cases, for the year 1929, the percentage was approximately 75. The results for the year 1930 are inconclusive because so many of the reports were not yet due. Reports were considered as being filed promptly if in most instances less than one month elapsed between the date they were due and the date they were filed.

An examination of the stenographer's records in all of these security issues cases showed that at the hearing some statement was always made with regard to the specific purposes to which the proceeds of the securities issued would be applied, and the approximate amount expected to be realized.

In reviewing this discussion of security issues, it must be borne in mind, that the entire record of the cases is always available in the files of the Commission, and if the public utility should depart from the purposes or conditions set forth at the hearings, the Commission could proceed to enjoin any such evasion of the law.

CHAPTER VI

THE COMMISSION AND THE COURTS

The provisions of the law with regard to court proceedings by and against the Commission have already been discussed. After an order of the Commission has been promulgated, an action may be instituted within sixty days in the courts of the state to vacate, modify, or set aside the order. These actions may be instituted by the public utility or any other party in interest who might feel aggrieved at the order on the ground that it is unreasonable or unlawful. This leaves the field open to the public utilities, complainants, consumers, protestants, or the People's Counsel to institute action on the order of the Commission. These actions, which in effect amount to appeals, may be taken by filing bills in equity in the Circuit Courts for the counties, or in the Circuit Court, or Circuit Court No. 2 of Baltimore City. These bills set forth the grounds for the appeal, and ask that the order be vacated. The actions are all filed against the Commission as defendant. The Commission is required to file an answer within twenty days of service of the complaint. Then the case stands ready for trial on fifteen days' notice.¹

In addition to these actions, which may be brought against the Commission in order to set aside its orders, the Commission may enter the courts to ask for an injunction to restrain the violation of any of its orders, or of the provisions of the Public Service Commission Law. Answers to these complaints are required to be filed by the defendants within twenty days after service of the complaint.² Just as the Commission may ask for an injunction to restrain violations of its orders, or the law, persons may also proceed against the Commission to require it to carry out the law, or to refrain from violating it. This latter type of proceeding, against the Commission, has been resorted to particularly under the public motor vehicles law, either to require the Commission to issue a permit which had been requested and refused, or to enjoin it from interfering with the operation of motor vehicles, which the plaintiff claims do not come within the scope of the law.

¹ *An. Code, P. G. L.*, 1924, and *Sup.* 1929, Art. 23, Secs. 359 and 404.

² *An. Code, P. G. L.*, 1924, Art. 23, Sec. 383.

From any decrees, orders, or judgments rendered by the courts in an action to which the Public Service Commission is a party, an appeal may be taken by either plaintiff or defendant to the Court of Appeals. In general, appeals in the state of Maryland must be taken within two months,³ but in the case of actions to set aside an order of the Commission only twenty days are allowed.⁴ In spite of that provision, in two cases which went to the Court of Appeals, almost the entire two months were permitted to elapse, and no question was raised on this point.

Besides the proceedings in the lower courts, and in the Court of Appeals of Maryland, to which the Commission may be a party, such cases may also find their way into the federal courts on the ground that they involve a federal question. All cases which were tried in any federal courts represented actions to set aside an order of the Commission.

The cases in the Maryland courts may, therefore, be divided into two groups: those instituted by parties to cases to set aside an order of the Commission, and those instituted either by, or against, the Commission to require obedience, or conformity to, or to enjoin violations of, the Public Service Commission Law.

Three cases, of which two went to the Court of Appeals, and one of which was disposed of in the lower courts, dealt with the constitutionality of the law in general. Two concerned the salaries of the Commissioners in particular. They have not been included in the statistical material of this chapter, since they concern neither cases filed with the Commission nor the operation of the law in its specific functions.

The cases in the courts will be treated under the following headings:

- I. The Court of Appeals.
- II. The Lower Courts of Maryland.
- III. The Federal Courts.
- IV. Summary.

I. THE COURT OF APPEALS

Down to the close of 160 Md., which includes opinions rendered in the January term of 1931, of the Court of Appeals of Maryland, the Public Service Commission has been a party

³ *Ibid.*, Art. 5, Sec. 6.

⁴ *Ibid.*, Art. 23, Sec. 407.

in 32 appeals. Cross appeals and joint appeals have been treated as a single case, but whenever two appeals involved a single case before the Commission, the appeals were counted as two.⁵ Cases which merely interpreted the Public Service Commission law, but to which the Commission was not a party have not been included. These 32 cases are made up of two groups: 23 were appeals which involved orders of the Commission, and 9 were not. These two groups will be treated separately in the primary statistical analysis, but treated together in the final summaries.

ACTIONS TO VACATE ORDERS OF COMMISSION

The actions to overrule the Commission's orders were instituted in the following courts:

Total cases	23
Circuit Court Baltimore City.....	10
Circuit Court No. 2 Baltimore City.....	10
Circuit Court Montgomery County.....	1
Circuit Court Prince George's County.....	1
Circuit Court Worcester County.....	1

Distributed according to the dates on which these cases were instituted, almost 40% had been filed before the Commission in the years from 1910 to 1915.

The following schedule shows the total number of formal cases, instituted before the Commission, divided into four time periods, compared to the number of these cases which went to the Court of Appeals:

MAJOR PERIOD	TOTAL NUMBER OF CASES FILED	TOTAL NUMBER OF CASES TAKEN TO COURT OF APPEALS
TOTAL CASES.....	3183	22
1910-1915.....	1013	9
1916-1920.....	861	3
1921-1925.....	567	5
1926-1930.....	742	5

For the purpose of the schedule above, but for no other purposes, the two United Railways and Electric Company ap-

⁵ This refers to the two appeals of the United Railways and Electric Company, 155 Md. 572 and 157 Md. 70, which constituted a single case on the Formal Docket of the Commission.

peals of 1928 and 1929 were treated as one, because they arose from a single case on the docket of the Commission.

The following is a summary of the crucial questions involved in cases which have gone up on appeal:

Total cases	23
Extension of service, improvement of equipment, or of practices of the utilities	7
Valuation and Rate cases.....	3
Rates only	5
Valuation only	1
Motor vehicle permits.....	1
Municipally owned electric plants.....	2
Abandonment of service.....	1
Sale of capital stock of public utility.....	1
Jurisdiction of Commission to enforce orders.....	1
Appeal on interim order.....	1

The valuation and rate cases are only two, although shown as three appeals. They are the Havre de Grace Bridge Company case of 1917 and the two United Railways and Electric Company appeals.⁶ The small number of these appeals is particularly striking in view of the general interest and importance which attaches to cases of this type.

The rate cases, which number five, are those involving switching rates, commutation rates, telephone rates, rates of real estate companies furnishing water to consumers in their developments, and the jurisdiction of the Commission to prescribe these rates.⁷ The valuation case concerned the method of valuing the easements of a public utility for the purpose of determining the rate base.⁸ The cases involving services and practices of the public utilities are the most extensive. They concern jurisdiction of the Commission to order extension of service, to prescribe the fixing of railroad time schedules, to prescribe the grade for a railroad bed which had to be replaced, to require liability insurance from taxicab companies, and to prescribe rules for the conduct of telephone companies.⁹ The municipal electric plants involved in the appeals

⁶ 132 Md. 16; 155 Md. 572; 157 Md. 70.

⁷ 121 Md. 1; 122 Md. 355; 126 Md. 59; 126 Md. 513; 143 Md. 622.

⁸ 151 Md. 337.

⁹ 122 Md. 438; 122 Md. 612; 124 Md. 141; 126 Md. 478; 155 Md. 104; 160 Md. 476; 160 Md. 202.

were those at Hagerstown and at Snow Hill.¹⁰ The motor vehicle permit case concerned the jurisdiction of the Commission in respect of interstate bus lines.¹¹ This matter was finally taken to the Supreme Court of the United States. The other cases concerned the jurisdiction of the Commission in respect of the abandonment of service,¹² the sale of all the capital stock of a public utility to another corporation,¹³ the effect of the Commission's orders until vacated,¹⁴ and the disposition of an appeal taken on an interim order of the Commission which was superseded by a subsequent order of the Commission.¹⁵

An analysis of these cases according to appellants shows that eleven cases were appealed by the public utilities, nine cases by the Commission, one case on cross appeals, one case by the People's Counsel, and one case by a complainant against a utility. The case appealed by the People's Counsel involved the method of valuing easements, and the appeal by the complainant concerned the rules of the telephone company. These latter appeals are particularly interesting, because they illustrate the dual capacity of the Commission, as a judicial tribunal, and later, as a party litigant, defending its orders.

The final disposition of the appeals shows that in the eleven appeals taken by the public utilities the lower courts were affirmed in seven cases, and reversed in four; in the nine appeals by the Commission the lower courts were affirmed in six cases, reversed in one, and reversed in part, and affirmed in part, in two; in the cross appeals the lower court was affirmed; in the appeal of the People's Counsel the lower court was reversed. In the appeal by the complainant the lower court was affirmed. In total, therefore, the lower court was affirmed in fifteen cases, reversed in six and affirmed in part and reversed in part in two cases. The orders of the Commission were affirmed in nine cases, reversed in eleven cases, and affirmed in part and reversed in part in three.

The following schedule is a summary of time intervals elapsing in these cases:

¹⁰ 151 Md. 670; 153 Md. 464.

¹¹ 143 Md. 570.

¹² 141 Md. 398.

¹³ 154 Md. 445.

¹⁴ 131 Md. 649.

¹⁵ 147 Md. 279.

TIME INTERVAL	TIME ELAPSING				
	From Date Case Filed with the Commission to Date of the Order of the Commission	From Date Case in Court was Instituted to Date of Court Decree	From Date Appeal was Taken to Date Decided by Court of Appeals	From Date Case was Filed with the Commission to Date of court decree	From Date Case was Filed with the Commission to Date of Decision of Court of Appeals
TOTAL CASES.....	23	23	23	23	23
Less than 3 months.....	7	11	5	1	.....
3 to 6 months.....	3	2	14	5	2
6 to 9 months.....	4	6	3	2	2
9 months to 1 year.....	1	1	1	4	4
1 to 2 years.....	3	3	.....	4	6
2 to 3 years.....	2	.....	.....	4	5
Over 3 years.....	3	.....	.....	3	4
Median in months—approximate.	7	4	4½	12	19½

It is interesting to note in the third column, that all of the cases in the Court of Appeals were disposed of within one year from the time when the appeal was taken, and that all, but one case, were disposed of in less than nine months. Nineteen of the twenty-three cases were closed in the Court of Appeals in less than three years from the time they were filed with the Commission.

Of the nine cases which occupied more than two years, from the date filed with the Commission to the date of the decree of the Court of Appeals, only two were cases which had been begun since 1920. Of the eleven appeals which occurred in cases filed since 1920 (counting the United Railways cases as two) six were disposed of in less than one year, three from one to two years, one from two to three years, and one case more than three years, from the date filed with the Commission to the date of the order of the Court of Appeals.

In interpreting the time intervals shown in the above schedule, one must bear in mind the intervals elapsing from the time in which appeals are taken from the order of the Commission to the date of filing the case in the courts, and the time elapsing between the decree of the court and the filing of the appeal to the Court of Appeals.

The following is a summary of the time intervals elapsing for these appeals. It should be remembered that the law requires appeals to the Court of Appeals to be taken within twenty days in these cases:

TIME INTERVAL	TIME ELAPSING IN FILING APPEALS	
	From Order of Commission to Courts	From Order of Courts to Court of Appeals
TOTAL CASES.....	23	23
Less than 10 days.....	9	15
11 to 20 days.....	5	6
21 to 30 days.....	4	.....
31 to 40 days.....	.....	.....
41 to 50 days.....	1	.....
51 to 60 days.....	4	2

In sixteen of these twenty-three cases, no new testimony was taken in the courts. The decrees of the courts in these sixteen cases were rendered either on bill of complaint and answer, demurrer, or on the pleadings, with a copy of the evidence which was submitted to the Commission transmitted to the court.

ACTIONS TO ENJOIN VIOLATIONS OF THE LAW

There were nine cases which went to the Court of Appeals to which the Public Service Commission was a party, but which did not involve the validity of any of the orders of the Commission. Of these nine cases, five concerned the control of public motor vehicles, three dealt with the power of the Commission over security issues, and one with the control of the interstate transfer of natural gas.

In the motor vehicle cases, in two instances the Commission asked for an injunction to restrain violations of the law,¹⁶ in two cases the operators asked for injunctions to restrain the Commission from invoking the law against them,¹⁷ and in one case the operators asked for a decree requiring the Commission to issue a permit.¹⁸ In the security issue cases the Commission

¹⁶ 135 Md. 677; 141 Md. 674.

¹⁷ 149 Md. 30; 150 Md. 641.

¹⁸ No opinion filed in this case. It was appealed from the Circuit Court of Baltimore City by the Washington Motor Coach Company.

was party plaintiff in all instances. In two of the three cases the Commission was the original party plaintiff,¹⁹ but in the third case the Commission joined as party plaintiff in a suit already begun by the consumers of the public utility.²⁰ The natural gas case was instituted by the Commission to establish its authority to regulate the sale of gas introduced into Maryland from West Virginia, and which was distributed in Maryland.²¹

In the Court of Appeals, four out of the five motor vehicle cases were disposed of in favor of the Commission; two of three security issue cases were decided against it, and its jurisdiction over the distribution of natural gas was affirmed.

In this group, also, it is found that the number of cases within the last few years has been diminishing. One of these cases was instituted prior to 1916, two cases between 1916 and 1920, five cases between 1921 and 1925, and only one case between 1925 and 1930.

The time analysis of these cases indicates a speedy disposition. The following is a summary of the intervals elapsing from the date the cases were instituted in court to the date of the final decree, from the date the appeal was filed to the date of the decree of the Court of Appeals, and the time elapsing from the date the case was filed to the date of the decree of the appellate court:

TIME INTERVAL	TIME ELAPSING		
	In Lower Court	In Court of Appeals	From Date Case Filed in Lower Court to Decree of Court of Appeals
TOTAL CASES.....	9	9	9
Less than 3 months.....	6	2	.....
3 to 6 months.....	2	5	5
6 to 9 months.....	1	2	1
9 to 12 months.....	.....	.....	1
1 to 2 years.....	.....	.....	2

In taking the appeal, seven of the nine cases were filed within ten days of the decree in the lower court, one in the period

¹⁹ 121 Md. 179; 146 Md. 580.

²⁰ 148 Md. 90.

²¹ 134 Md. 137.

between twenty and thirty days, and one in the period between fifty and sixty days.

The following table is an analysis of these nine cases, according to the Courts of original jurisdiction:

Circuit Court Baltimore City.....	6
Circuit Court No. 2 Baltimore City.....	1
Circuit Court Allegany County.....	1
Circuit Court Harford County.....	1

II. THE LOWER COURTS OF MARYLAND

Next to consider are those cases in the courts of Maryland to which the Public Service Commission was a party, but which did not reach the Court of Appeals. Here, too, the distinction will be made between those cases in which action was brought to set aside an order of the Commission, and those cases in which parties sought to enjoin violations of the law. There is a record of twenty-six cases in all, eighteen belong to the first group and eight to the second.

In treating the cases in the Court of Appeals one can be reasonably sure that all of the cases have been included, as opinions are almost invariably handed down with the decrees. But in finding and tabulating the cases in the lower courts, no such simple method was available. The Commission does not docket court cases, and only occasionally is there any notation in its files about orders which have been taken to the courts. It was necessary, therefore, to rely upon a search of the published reports of the Commission, the files of the General Counsel, and the references which could be gleaned from the "case jackets." It is reasonably certain that all of the cases involving orders of the Commission have been obtained, but it is quite possible that some other cases to which the Commission was a party, either individually, or jointly with others, have been omitted. This possibility of omission applies particularly to cases which may have been instituted to enjoin violations of the public motor vehicle laws, and cases in the county courts.

ACTIONS TO VACATE ORDERS OF COMMISSION

There have been eighteen cases instituted in the courts of the state to vacate orders of the Commission, which did not go to the Court of Appeals. These eighteen cases were distributed in the following courts:

Total cases	18
Circuit Court Baltimore City.....	4
Circuit Court No. 2 Baltimore City.....	9
Circuit Court Cecil County.....	1
Circuit Court Frederick County.....	1
Circuit Court Harford County.....	1
Circuit Court Montgomery County.....	1
Circuit Court Worcester County.....	1

The following is a summary of these cases according to the periods within which they were filed before the Commission :

Total cases	18
1910 to 1915.....	12
1916 to 1920.....	2
1921 to 1925.....	..
1926 to 1930.....	4

These types of cases show much less diversity than those taken to the Court of Appeals.

Total cases	18
Complaints regarding prices and services...	11
Motor vehicle permits refused as applied for	1
Protests against authority granted utility to issue securities and construct equipment..	2
Protests against authority granted utility to construct equipment and extend service..	2
Protests by railroad against demurrage charges prescribed by Commission.....	1
Protests by gas company against standards prescribed by Commission.....	1

The complaints dealt with the accommodations for negroes on a Chesapeake Bay passenger steamer, the maintenance of a telegraph office in a hotel lobby, the extension of through service on a railroad line, and charges by water companies, electric power companies, street railways, and one of the sanitary commissions. Only one of the complaints regarding prices and service concerned a valuation and rate case.

The following is a summary of the time intervals elapsing in these cases :

TIME INTERVAL	TIME ELAPSING		
	From Date Case Filed to Date of Commission's Order	From Date Case Instituted in Court to Date of Court's Decree	From Date Case Filed with Commission to Date of Court's Decree
TOTAL.....	18	18	18
Less than 3 months.....	4	3	1
3 to 6 months.....	9	1	.....
6 to 9 months.....	1	1	2
9 to 12 months.....	1	2	.....
1 to 2 years.....	2	3	3
2 to 3 years.....	1	.....	4
Over 3 years.....	.....	1	1
Cases never disposed of.....	.....	7	7

The cases were disposed of as follows:

Total cases	18
Order of Commission Affirmed or Action Dismissed	8
Case Returned to, or Recalled by Commis- sion	3
Never finally disposed of.....	7

ACTIONS TO ENJOIN VIOLATIONS OF THE LAW

The list of these cases includes eight. This may not be complete. Under this heading are included two cases in the Circuit Court of Baltimore City, three cases in the Circuit Court No. 2 of Baltimore City, two in the Circuit Court for Wicomico County, one in the Circuit Court for Allegany County, and one in the Circuit Court for Montgomery County. These cases show the following distribution, according to the periods in which they were instituted:

Total cases	8
1910 to 1915.....	..
1916 to 1920.....	3
1921 to 1925.....	1
1926 to 1930.....	4

Seven of the above eight cases have dealt with the enforcement of the public motor vehicle law, and one case dealt with the attempt of the Commission to enforce the penalty pro-

visions of the law for failure to file annual reports. The penalty case was dismissed by the Commission. Of the seven motor vehicle cases, three were dismissed by the complainants against the Commission, three were never prosecuted to completion, and one was determined in favor of the Commission on demurrer.

In the five cases which were carried through to final decree, three were closed in less than three months from the date instituted, one falls in the three to six month class, and one in the one to two years class.

III. THE FEDERAL COURTS

There have been five cases to which the Public Service Commission was a party which were carried to the federal courts. Three of these cases have been taken to the Supreme Court of the United States from the Court of Appeals,²² one was taken to the United States District Court²³ and one to the United States Circuit Court for the District of Maryland.²⁴ The cases in the District Court and Circuit Court were instituted directly on the order of the Commission, but the District Court case had also been tried on a minor question in the Court of Appeals.

The three Supreme Court cases included a rate and valuation case, a commutation rate case, and a public motor vehicle case. The District Court case was an important rate and valuation case which involved the Chesapeake and Potomac Telephone Company. The Circuit Court case involved the transfer of the property of the Northern Central Railway to the Pennsylvania Railroad.

In the Supreme Court cases, the orders of the Commission were reversed in two cases and sustained in one, in the District Court case the order of the Commission was set aside, and in the Circuit Court case it was sustained.

In two of the three Supreme Court cases, between two and three years elapsed from the time of the decree of the Court of Appeals to the time of the decree of the Federal Court. In both of these cases the entire time elapsing was less than one year from the date the cases had been filed with the Commission to the date of the decision of the Court of Appeals. In the third case (the United Railways and Electric Company case) the

²² 245 U. S. 6; 267 U. S. 317; 280 U. S. 234.

²³ 3 Fed. (2d) 938; P. U. R. 1925D, 407 (1925).

²⁴ Equity Docket G., p. 37 (1911).

decision of the Supreme Court was only seven months behind that of the Court of Appeals, yet this case had already been litigated in Maryland for about twenty months.

The District Court case, in which Judge Rose wrote the opinion, was handled with great dispatch, and was closed in less than two months after the order of the Commission had been announced.

The Circuit Court case occupied almost six years, although the case had taken less than five months before the Commission.

IV. SUMMARY

The following is a summary of the court cases in which the Commission has been a party:

(1) Court of Appeals of Maryland.

32 appeals

23 covering 22 cases of the Commission

9 other actions

(2) Lower Courts of Maryland.

26 cases

18 covering cases of the Commission

8 other actions

(3) Federal Courts.

5 cases

3 Supreme Court Appeals from Court of Appeals of Maryland

1 District Court (had also been tried in the Court of Appeals of Maryland, but on a minor point.)

1 Circuit Court

Orders of the Commission were involved in 46 of the cases which went to the courts. In one case, however, two appeals were taken, and the four cases which went to the Supreme Court and to the District Court had all been litigated in the courts of Maryland. In only 41 cases out of all instituted before the Commission was action, therefore, taken in the courts. The following is a summary of these court cases according to the dates filed, compared to the total number of cases filed with the Commission for like periods:

MAJOR PERIOD	CASES IN COURTS	TOTAL CASES ON FORMAL DOCKET OF COMMISSION
TOTAL.....	41	3183
1910-1915.....	22	1013
1916-1920.....	5	861
1921-1925.....	5	567
1926-1930.....	9	742

Over half of these cases, therefore, fall in the first period of the Commission's operations in the years from 1910 to 1915, although less than one-third of the total cases filed with the Commission were entered in this period. The comparatively large number of court cases at this time is due to the fact that both the Commission and the public utilities desired to determine the extent of the effect of the law in the years of its early operation.

These forty-one cases may be classified in brief under the following types:

Total cases	41
Rates and services.....	16
Extending service, constructing equipment and issuing securities.....	12
Rates and Valuation	3
Motor Vehicles	2
All Others	8

The cases in which orders of the Commission were not involved number seventeen. They occur at a time relatively different from the group first considered, which involved orders of the Commission. By major periods they distribute as follows:

Total cases	17
1910 to 1915.....	1
1916 to 1920.....	5
1921 to 1925.....	6
1926 to 1930.....	5

The distribution of types of cases under this heading will explain the variation in time distribution.

Total cases	17
Motor Vehicle Cases.....	12
Security Issues	3
All Others	2

The license provisions which gave the Commission authority over permits to motor vehicles used in public employment were not passed until 1916.²⁵ The predominating position of the motor vehicle cases in this group explains the time distribution.

Of the fifty-eight cases filed in the Maryland Courts, forty-five were instituted in the Baltimore City courts, and only thirteen in the county courts. The cases in the Baltimore City courts have all been tabulated, but it is possible that there may be some omission in respect of the county courts.

The study of the time intervals elapsing in the disposition of cases seems to indicate that the provisions of the law designed to speed the course of public utility cases are generally proving effective. Even in the cases on orders of the Commission which went to the Court of Appeals, it is found that nineteen out of twenty-three were concluded in less than three years from the date they were filed with the Commission. Of the four cases which took over three years for completion, three had remained with the Commission for at least that length of time. Over half of these cases which went to the Court of Appeals were disposed of by the lower courts in less than one year from the date they were filed with the Commission. Equally noteworthy is the fact that eleven of the twenty-three cases which were filed in court were disposed of in less than three months by the lower courts. The speed with which decrees of the Court of Appeals may be obtained is also apparent in the fact that nineteen out of the twenty-three cases were disposed of in less than six months, by that tribunal.

The other cases which went to the Court of Appeals also show considerable speed in their disposition. No case occupied more than two years altogether. Six of the nine cases were cleared out of the lower courts in less than three months, and seven of the nine cases were cleared out of the Court of Appeals in less than six months.

²⁵ *Laws of Md.*, 1916, Chs. 610, 714.

CHAPTER VII

VALUATION AND RATE CASES

I. INTRODUCTION

The most significant function residing in the commissions which regulate public utilities is the power of fixing rates. All other functions, such as the control over security issues, regulation of the extensions of service, the prescription of standards, the designation of uniform accounting systems, the investigation of the affairs of the public utility, and the valuation of its property are all incidental, and only auxiliary, to the rate making power.

The rate making power is not only the culmination of all other powers residing in the Commission, but the exercise of this power imposes the most severe test upon the skill, knowledge, and ingenuity of the Commissioners. In none of the other problems which come before them are the legal injunctions so confining, yet so indefinite, the economic factors so intricate, and so incommensurable. There may be some merit in designating the rate making power as a combination of the judicial and legislative functions of government, but this statement fails to suggest the considerations which press upon the regulatory body in cases of the rate making type. Primarily, the problems confronting the Commissioners in deciding a valuation and rate case involve the determination of the direction and the significance of certain economic factors, and, only secondarily, involve constitutional, or legal questions.

Before passing to a discussion of the valuation and rate cases in Maryland, it must be pointed out, that, for the purposes of this chapter, the term, rate and valuation, has been used in a narrow sense. There is here included a consideration of only those cases in which the fixing of rates has been viewed as the problem of determining the proper return to which a public utility may be entitled. The large numbers of cases involving rates for particular services, or the adequacy of certain services, have been excluded. The purpose of this chapter is to present, in summary, a review of the cases which have come before the Public Service Commission of Maryland in which the entire rate structure of a public utility, or the rate

structure for a complete service is involved. In the determination of this rate structure, the case must ostensibly turn upon the ascertainment of the income which the utility is entitled to earn.

Valuation and rate cases in Maryland may begin in a variety of ways. The initial action, may consist merely in the application filed by a public utility for permission to change its rates; it need not originate only by a request for a valuation. The investigation of the valuation of the utility may be the result of a formal complaint against some or all of its charges. Besides these methods, the Commission is, itself, authorized to institute a complaint against a public utility, and, either upon complaint, or on its own motion, may order an investigation of the property, affairs, and charges of a utility.¹ Upon the filing of any new rate schedules, the Commission may order the suspension of the new rates, pending an investigation.² Complaints filed by the mayor, or chief executive of any municipality, or county, or by one hundred customers, or purchasers, of the service of the utility, must be followed up by an investigation by the Commission.³ Also, informal protests may be filed, and on the basis of these protests, the Commission may order an investigation.⁴ These investigations need not, however, be so complete as to justify including them as valuation and rate cases.

II. DATA ON MARYLAND CASES

It is certainly apparent that a mere statement of the number of valuation and rate cases, on the Formal Docket of the Public Service Commission, is without significance in indicating the importance of these cases, if such a figure is taken only in relation to the total number of cases. On a somewhat *arbitrary basis*, perhaps, twenty-six of the three thousand, one hundred and eighty-three cases on the Formal Docket may be selected as constituting the valuation and rate cases. But such a statement is not the complete story, for in one instance the Commission kept a case alive for a period of years, and issued a series of orders regarding rate changes under supplementary proceedings, whereas in another instance each rate change was

¹ *An. Code, P. G. L.*, 1924, *Sup.* 1929, Art. 23, Sec. 364 A.

² *Id.*

³ *An. Code, P. G. L.*, 1924, Art. 23, Sec. 395.

⁴ *Ibid.*, Art. 23, Sec. 372.

filed as a separate case. Then again, in one example the valuation of the property of the public utility was docketed as one case, and the rate case as another, whereas, in other instances the valuation was a part of the general proceedings concerning the rate changes.

A mere numerical statement is misleading, also, because of the great amount of time, work, and money frequently expended on a single rate and valuation case. One of these cases may be the equivalent in effort and cost to a thousand, or more, petty matters, which can be closed perfunctorily by the Commission, upon a very brief hearing, or on no hearing at all.

Of greater interest than the number of cases, however, is the fact that of the one hundred and fifty-five public utilities listed in the 1930 report of the Commission,⁵ there are published opinions in valuation and rate cases concerning only nine. To these nine may be added opinions concerning seven more public utilities, which are no longer listed as independent companies, thus making the total, sixteen. Of the cases relating to the companies still listed, the most important are those concerning the United Railways and Electric Company, the Consolidated Gas, Electric Light and Power Company, and the Chesapeake and Potomac Telephone Company, all of Baltimore. The other six companies include two water companies, three gas companies, and one gas and electric company. The seven companies which are no longer extant include one steam railroad, one bridge, one water, one gas, and three electric companies. Sixteen companies in all have, therefore, been investigated and reported on. Thirteen cases dealt with the three principal public utilities of the state, and thirteen cases dealt with thirteen lesser companies. Thus there are twenty-six cases in all.^{5a}

The smallness of the number of these cases should not be surprising. Although, they are not all of equal magnitude, some of these cases were of sufficient size to absorb most of the Commission's facilities and resources over a period of years. It appears impossible for the Commission to be engaged in more than one major rate and valuation case at a time.

Of the twenty-six cases included as valuation and rate cases, the action in eighteen instances was initiated after a new rate schedule providing for increased rates had been filed. These actions took the form of either protests or complaints.

⁵ *P. S. C. Md.*, XXI, p. 5.

^{5a} These data are based upon the *published* opinions and reports of the Commission.

In the thirteen cases, other than those involving the three principal utilities, the complaints, or protests, were filed by municipalities in eight instances, by unorganized groups in two instances, and in three cases the action was instituted by the Commission. In many of these cases new parties appeared as protestants after the action was filed.

In proceedings relating to the three principal public utilities, the method of instituting the different cases varied. In almost all instances, however, the action was filed by the Commission, either as a complaint, or as a formal order instituting an investigation, and protests of municipalities, organized civic bodies, and unorganized groups were filed later. These protestants were also represented at the hearings by counsel.

Of the twenty-six valuation and rate cases, five were taken to the courts. One case was taken through the lower court only, then returned to the Commission for further hearings and proceedings. One case was taken directly to the Federal District Court; the court decreed that the original order of the Commission be set aside. In another case, that of the Havre de Grace Bridge Company, the action on the order of the Commission was taken through the Court of Appeals, and the order was vacated. Two appeals were taken in one of the United Railways cases; in the first the Commission was reversed, in the second appeal the Commission was sustained. The corporation then carried the second appeal through the Supreme Court, and there the Commission was reversed. The fifth case concerned only the valuation of the property of the United Railways. The appeal here concerned the question of including easements in the rate base, and, if they were to be included, the method of valuing them. The Commission had included easements, and had accepted the tax assessment as the valuation. The conclusion, as to the tax assessment was reversed on appeal. In all these cases, therefore, when appeal was taken to the courts, the orders of the Commission were either reversed or modified.

In ten cases closing orders were filed in the same calendar year as the case was instituted, ten cases more were closed in the year succeeding that in which they were begun. In two cases about two years elapsed, and in four cases, more than two years passed. The cases occupying the longest period were those involving the valuation of the property of the Baltimore County Water and Electric Company and of the property of the United Railways and Electric Company. Both cases were

filed in 1912, the former was not completed until 1918, and the latter not until 1924. The work on these cases was not continuous, however. In the instance of the United Railways case, a number of important rate decisions by the Commission, which were filed in separate cases, preceded the completion of the valuation.

III. THE LEGAL THEORY

The legal theory of rate making for public utilities has been treated so exhaustively in works on public utility economics and law, that a brief statement of the principles is all that is required in order to introduce a review of the Maryland practice.

Most of the "law" on the subject of rate regulation is found in the decisions of the Supreme Court, for, in spite of the violent criticism which has been directed against it, the statement of the court in *Smyth v. Ames*,⁶ still remains the fountain source of theorizing in this field.

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

By this pronouncement one leaves the realm of law, and enters that of economics. The determination of values is an economic and not a legal question. But if the values or the rate of return are so fixed as to deprive the public utility of a fair return upon its property devoted to the public use, the courts may intervene. Whether, or not a confiscation of the rights of property has occurred is a legal question, of which the courts take cognizance.⁷

It must be remembered that *Smyth v. Ames*, and the line of cases which followed it, merely laid down broad, general principles, and left much to the discretion of the regulatory body. Only when the rates fixed may be considered as the taking of property for public use without just compensation, will the courts interfere.⁸ These are the essential dogmas on which rests the legal control of the regulation of public utility rates.

⁶ 169 U. S. 466, p. 546.

⁷ *Ibid.*, p. 545; *San Diego Land & Town Co. v. National City*, 174 U. S. 739, p. 754.

⁸ *Id.*; *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, p. 443.

Inasmuch as rate cases deal with the fixing of rates for the future, and rarely if ever with the adjustment of rates charged in the past, it is necessary to forecast almost every factor, which may be required to determine the rate structure. Some of these factors can be estimated with reasonable accuracy, others require the exercise of considerable skill in the art of prophecy in order to forecast them accurately, and still others can be determined only by the use of arbitrary judgment.

Under the principles which are set forth in *Smyth v. Ames*, and developed in subsequent cases, the principal problems for determination by a commission in a rate and valuation case are four in number, as follows:

- (1) The rate base upon which the public utility is entitled to earn a return
- (2) The earnings and expenses of the utility
- (3) The rate of return which the utility may earn
- (4) The rate structure

Under each of these headings a group of subsidiary problems arise.

THE RATE BASE UPON WHICH THE PUBLIC UTILITY IS ENTITLED TO EARN A RETURN

This problem involves the determination of the value of the property which the public utility has devoted to the public service. In *Smyth v. Ames* the Supreme Court enumerated the factors to be considered in arriving at that which the court terms "fair value," and which is also referred to frequently as value for rate making purposes. These factors or kindred values are:

1. "The original cost of construction, the amount expended in permanent improvements."
2. "The amount and market value of its bonds and stocks."
3. "The present as compared with the original cost of construction."
4. "The probable earning capacity of the property under particular rates prescribed by statute."⁹

These are the ingredients from which fair value is to be composed, but the court asserts they may not be the exclusive components. No hint is given as to how these values are to be ascertained, what should be used when they are not ascertain-

⁹ 169 U. S. 466, p. 546.

able, how conflicts in opinion concerning any of them are to be resolved, and what weight should be assigned to each in arriving at "fair value." Nevertheless, this is the method which courts and commissions profess to be following in fixing rates and determining rate bases.¹⁰

Values based on earning capacity, and values based on the amount and market values of securities raise difficulties, but the principal concern of the Commission is with the derivation of the historical cost and the reproduction value of the properties. In ascertaining the present value of the physical properties, the rate-making body must give due allowance to working capital, organization expense, easements,¹¹ construction overheads,¹² and going value.^{12a} These elements of value and the problems which they raise will be considered in detail in discussing the practice in valuation and rate cases in Maryland. A further problem of valuation confronting the regulatory body is the deduction for depreciation which should be made in computing the rate base.¹³ Depreciation, under this heading, is a reserve, or deduction from the value of the property, as distinguished from the annual allowance for depreciation, which is an operating expense.

THE EARNINGS AND EXPENSES OF THE PUBLIC UTILITY

In order to ascertain the return which the public utility will probably earn, it is necessary to approximate net earnings. This process requires a determination of the estimated gross revenue, and the estimated expenses. The gross revenue in turn is based on the services which the public utility may be expected to sell, and the rates at which these services may be sold. Included in the expenses, must be a proper allowance for depreciation of the property used.¹⁴

THE RATE OF RETURN WHICH THE UTILITY MAY EARN

The factors which must be taken into account in fixing the rate of return which the public utility is entitled to earn are numerous. The outstanding considerations are the financial

¹⁰ *S. W. Bell Tel. Co. v. Pub. Serv. Com.*, 262 U. S. 276, pp. 287, 295.

¹¹ *Willcox v. Cons. Gas Co.*, 212 U. S. 19, p. 48; *Minnesota Rate Cases*, 230 U. S. 352.

¹² *Des Moines Gas Co. v. Des Moines* 238 U. S. 153, pp. 162, 165, 171.

^{12a} *Id.*

¹³ *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, p. 10.

¹⁴ *San Diego Land & Town Co. v. National City*, 174 U. S. 739, p. 757.

requirements of the public utility, the rates of interest on outstanding indebtedness, returns to property in other lines of business, the financial history of the utility being investigated, and the risk involved in the particular business.¹⁵

THE RATE STRUCTURE

The details of the rate structure are also the subject matter of regulation, but because of the frequent complexity and the technical nature of this problem, the influence of the Commission may be only general. The statute prohibits unfair rates, discrimination, rebates, false billing, free transportation, greater charges for a short haul than for a longer haul over the same route or under similar conditions. These are the general principles which govern the determination of rate structures.¹⁶

SUMMARY

In theory the public utility is entitled to earn a fair rate of return on its property devoted to the public service. If the earnings fall below the legal return, the public utility may apply for, and should be permitted, an increase in its charges. The return which the utility earns is the income of the company computed before any deduction for interest, or dividends is made.

IV. PRACTICE IN MARYLAND

The purpose of this section is to present briefly the policies and practices of the Public Service Commission of Maryland, as found in the opinions of the Commission and the courts in respect of the problems in valuation and rate cases. No attempt will be made to discuss the multitudinous questions of valuation and rate cases, but rather to throw into relief a few of the most interesting and the most frequently recurring problems in Maryland practice. Emphasis will be placed on the technique of decision, rather than upon the theories professed.

THE DETERMINATION OF FAIR VALUE

The most complete statement of the Maryland doctrine of valuation and rate making is found in the opinion of the Com-

¹⁵ *Willcox v. Cons. Gas Co.*, 212 U. S. 19, p. 49; *Bluefield v. Pub. Serv. Com.* 262 U. S. 679, p. 692.

¹⁶ *An. Code, P. G. L.*, 1924. Art. 23, Secs. 362, 387, 365, 366, 367, 369.

mission in the Chesapeake and Potomac Telephone Company case of 1916.¹⁷ In this opinion, the Commission accepted the decision in *Smyth v. Ames*, in good faith, yet in a thoroughly pragmatic manner. It proposed to ascertain, so far as possible, the original and reproduction cost of the property, the value of the property, as indicated by the amount and market value of its stocks and bonds, and the earning capacity of the property under existing rates. However, with these four values ascertained, no ready-made formula existed for extracting the "fair value" of the properties. The Commission insisted upon the interdependence of fair rates and "fair value," yet at the same time asserted that "fair value" was independent of other values, and susceptible of independent ascertainment. The whole investigation was viewed as "an equitable process of the highest order."¹⁸ In making the investigation, and the decisions required by it, the basic purposes of regulation were enunciated:

"First, *adequate service* to the public;

Second, *charges* for that adequate service which will be *fair to the public*; and

Third, *charges* which will be *fair to the utility* furnishing such service."¹⁹

The Commission, in this case, then proceeded to ascertain the various values enumerated, by "independent" analyses. It began by laying down the principles for the valuation of the physical property of the public utility, and in doing so wisely distinguished between "construction overheads" and "going value." Both were necessary elements in the rate base, but the former bore a direct relationship to the physical assets of the public utility, whereas, the latter was a general intangible asset attributable to the organization of the utility as a going concern.

The first difficulty in the method of the Commission appeared in this case when it was found impossible to ascertain original cost. After several months of effort by accountants and engineers, the Commission found itself compelled to reject the conclusions of this body of experts as to original cost, and accepted original cost and reproduction cost as identical.²⁰ Efforts to ascertain original costs seemed doomed to failure in

¹⁷ *P. S. C. Md.*, VII, pp. 143, ff.

¹⁸ *Ibid.*, pp. 155-158.

¹⁹ *Ibid.*, pp. 150-151.

²⁰ *Ibid.*, pp. 208-209.

other cases as well. In the valuation of the properties of the United Railways and Electric Company, for example, it was found that important records had been destroyed in the Baltimore fire of 1904, so that estimates again had to be resorted to.²¹ In another case, the valuation of the properties of the Consolidated Gas, Electric Light and Power Company, the Commission was dealing with the property of a company, the corporate history of which could be traced back to 1816.²² The present company was the result of a series of mergers and consolidations. If original cost were to be used, it would have to be ascertained on a more or less arbitrary basis. Another striking example of the inadequacy of original cost as a guide occurred in the Havre de Grace and Perryville Bridge Company case, in which the bridge had been given to the promoters of the corporation, and they in turn had transferred it to the corporation for \$49,300 in stock.²³ Inasmuch as the Commission arrived at a value of \$250,000 for the bridge property, the amount of original stock issued for it was obviously not accorded great weight.²⁴ Even in another case in which the book value of the property was accepted as original cost, the Commission asserted that the values had been adjusted at the time of the organization of the company in order to bring the values into conformity with the consolidation agreement.²⁵ Eight other cases dealing with small companies may be disposed of briefly. In five cases the Commission established original cost and in three cases it did not.²⁶

Before proceeding with a general criticism of reproduction value as an element of "fair value," two pertinent questions

²¹ *Ibid.*, XVII, p. 89.

²² *Ibid.*, IV, pp. 39, ff.

²³ *Ibid.*, VII, p. 421.

²⁴ *Ibid.*, p. 439.

²⁵ *Ibid.*, VIII, pp. 197, 204.

²⁶ In the five cases in which original costs were considered, these values were presented by the auditor. In one of these five instances (Eastern Shore Gas and Electric Co., *Ibid.*, XX, p. 184) the auditor's report was merely referred to, but the results were not set forth. In the four other cases more or less weight was attached to the "book values" presented. (Georgetown Gas Light Co., *Ibid.*, XII, p. 122; Hyattsville Gas & Electric Co., *Ibid.*, p. 161; Cumberland and Allegeny Gas Co., *Ibid.*, XVIII, p. 86; Washington Suburban Gas Co., *Ibid.*, XX, p. 198.) In the three cases in which original cost was not discussed in the opinion, practically no reference to it was made in two instances (Salisbury Light, Heat and Power Co., *Ibid.*, IX, p. 163, and Consolidated Public Utilities of Westminster, *Ibid.*, X, p. 216) and in the third case all that was found was a book account showing a balance of \$100,658. of which \$69,850. was designated as "organization and financing" (Lonaconing Water Co., *Ibid.*, p. 188).

must be considered. In building up a statement of reproduction value, should prices prevailing at the date, as of which the appraisal is being made, be taken exclusively, or should the price level over a reasonable number of years prevail? Should reproduction value assume the reproduction of identical equipment, or should the values be based on equipment adequate to meet the public demands, or render the service of the existing property? These two questions confronted the Commission in the Havre de Grace and Perryville Bridge Company case in 1916, and they have occurred in other cases as well.

In the bridge company case, the Commission was confronted with the choice of using as the basic price six cents a pound for steel, which was the price then prevailing, or adopting four cents, the average over a five year period. The Commission accepted the latter view, and asserted that this was the method it had always followed, and that this method bore the sanction of nearly every court and commission.²⁷ In 1919 the Commission again rejected prevailing high prices in making valuations and adopted so called normal "pre-war" prices.²⁸

The other point, so clearly illustrated by the bridge case, concerned the property to be assumed in determining reproduction cost. The particular property involved had been built originally as a railroad bridge, but the respondent company was operating it for vehicles and pedestrians. It was conceded on all sides that the existing iron superstructure was unnecessarily heavy for a highway bridge, and that the value to be ascertained was "the cost of constructing a new bridge of the same dimensions as the present bridge, but adapted more particularly to highway purposes."²⁹

The Commission in its investigations, simplified the problem of ascertaining reproduction value by separating the tangible and the intangible elements of property value. The tangible property was considered as "directly distributed costs,"³⁰ to which the Commission permitted the addition of "construction overheads." The intangibles were classified as easements and "going value."

The difficulties, due to changes in general price levels, attendant upon the determination of reproduction value, are illustrated by a series of cases which concerned the Chesapeake and

²⁷ *Ibid.*, VII, p. 430.

²⁸ *Ibid.*, X, p. 217, see also *Ibid.*, p. 339.

²⁹ *Ibid.*, VII, p. 429.

³⁰ *Ibid.*, p. 159.

Potomac Telephone Company. In the 1916 case, the Commission ascertained the value of the company's property as of June 30, 1914, and apparently intended that this valuation should be conclusive in all future cases. In 1920, the company again came before the Commission. This time, the Commission added the cost of the net additions since 1914 to the valuation for that year, and, apparently, gave no consideration to changes in the value since the dates of the additions. No issue was made of changes in reproduction value in that case. The rate changes granted in 1920 were substantially all for which the company asked. At the same time, the rates which were established permitted a return of only 5.30% on the property valuation.³¹ Neither consumers, nor utility took action for a judicial review.

In 1924 the Commission again ostensibly proceeded as it had in 1920. It regarded the 1914 valuation as final for property then in use, and permitted the case to be opened only on the question of additions to property since that date. For this purpose the Commission again ascertained the cost of the net additions, and this amount plus the 1914 valuation was taken as the new value.³² This time the utility objected, and proceeded in the Federal District Court to have the order of the Commission set aside. The method of valuation was one of the principal issues presented to the court. The court, in its opinion, discussed the fluctuating value of the dollar at great length. It pointed out that the Commission had apparently presupposed that one price movement offset another, and that, consequently, they could all be disregarded. The court, however, rejected the values placed upon the property by the company's appraisers, which values ranged from forty-one to forty-six million dollars, and established, by the application of index numbers a value of \$36,122,912. This amount represented the undepreciated value of the company's property and was approximately six million dollars more than the Commission's valuation. Here was clearly a case of complete identification of reproduction cost and "fair value," if one accepts the method of arriving at reproduction cost.³³

In the year following the decision of the court in this telephone company case, the Commission completed its valuation of the property of the United Railways and Electric Company.

³¹ *Ibid.*, XI, pp. 174, 177, 195.

³² *Ibid.*, XV, pp. 251-253.

³³ *Chesapeake and Potomac Telephone Co. v. P. S. C.* (1925) 3 Fed. (2d), pp. 938, ff.

As a general test of the soundness of its conclusions in ascertaining present values, it applied the index figure of 154 used by the court in the telephone case to original cost. This rough and ready method was supported, however, by a detailed schedule, which showed the "fair value" for each item of the company's property.³⁴

The Commission has always viewed with frank distrust company appraisals offered as evidence of reproduction value,³⁵ but in no case were appraisals accorded more scathing criticism than in the gas company case of 1923.³⁶

In addition to the "directly distributed costs" of the physical property, the other elements to be taken into consideration in arriving at reproduction cost are easements, construction overheads and "going value." The Commission was confronted with the two aspects of the "easement question" in 1926, when it completed the valuation of the property of the United Railways and Electric Company. It had on a previous occasion considered this problem, and now had to decide on the questions of including or excluding easements; and, if they were to be included, on the basis for valuing them. On the basis of an old opinion of the General Counsel, and a current opinion of the Attorney-General, who acted as counsel to the Commission that year, the Public Service Commission decided on the inclusion of the value

³⁴ *P. S. C. Md.*, XVII, pp. 90-97.

³⁵ In the gas company case of 1913, the methods of appraisers were still in an elementary state, (*Ibid.*, IV, p. 48) but in 1924, the elaborate appraisal by the telephone company was also accorded no consideration (*Ibid.*, XV, pp. 250-254).

³⁶ *Ibid.*, XIV, p. 103. "There are nearly six thousand pages of testimony in this case, in addition to several hundred exhibits, besides about five hundred printed pages of briefs. Of this appalling array of words and figures, the greater part relates to the reproduction cost-new appraisal presented by the company. It is unfortunate that this elaborate and expensive effort should have been of such little help to the Commission in its task of finding the present fair value of the company's property now used and useful in the public service. The company's experts adopted as a promise words cut from the pages of the highest judicial opinions, and by abstract logic deduced the familiar theory advanced by utilities that the Supreme Court of the United States authorizes the company to present and requires the Commission to give an almost controlling consideration to the cost-new of a theoretical plant constructed by the brain processes of the expert on the the witness stand, through the employment of imaginary promoters, lawyers, financiers, general and sub-contractors and workmen, at a cost that includes every conceivable omission, contingency or expense short of the romantic and ridiculous, in a market admittedly unable to supply the needed material in the assumed period of two years, all in a city like unto the real Baltimore in population, improvements, commerce and industry, but conceived as hitherto without central gas and electric plants."

of easements. The reason given was that the easements were valued as property for tax purposes and, therefore, had to be included in the rate base.³⁷ One of the Commissioners wrote a well reasoned dissenting opinion in which he quoted with approval the opinion of the New York Commission for the second district.

"If the franchise, which was a gift from the public to the company, should be made the basis of a money return, the practical result would be that the public would have to pay money to the company because it had given the company the right to occupy the public streets with its plant."³⁸

The court sustained the inclusion of easements as a part of the rate base, but overruled the majority on the method of valuation.³⁹ The majority had adopted the tax assessment as the basis for valuing the easements in arriving at the rate base.⁴⁰ In doing so they followed their own precedent in the Consolidated Gas, Electric Light and Power Company valuation of 1913. But the Court of Appeals rejected the Commission's method, and ruled that it would be reasoning in a circle to include the tax assessment in the rate base, because the tax assessment was based on the earnings of the property. It was held illogical to include in the rate base a factor which changes with the rate.⁴¹ The case was returned, and the Commission proceeded to value the easements as interests in land, and in those cases in which the utility used the streets jointly with the general public it took 25% of the fee simple value as representing the value of the easement.⁴²

The telephone company in 1916, had also urged the inclusion of a value for easements in its rate base, but the Com-

³⁷ *Ibid.*, IV, pp. 533-538; *Ibid.*, XVII, pp. 93, 297-299. A serious objection to the inclusion of easements in the rate base was the provision in the law, which prohibited the capitalization of franchises for an amount in excess of the price actually paid. (*An. Code, P. G. L. 1924, Art. 23, Secs. 381, 392*). This argument was answered by the distinction, recognized in Maryland, between franchises and easements in land. Franchises are defined as bare legal rights, whereas easements in land occur upon the actual exercise of these rights pursuant to the franchise. The court held that the *right* to do the thing was the franchise, the easement was the *thing done*. (*Cons. Gas, El. Lt. & Pr. Co. v. Balto. City*, 101 Md. 541). The implications of this view, and its application to the problem of valuation were fully discussed in the dissenting opinion of the Commissioner, referred to below.

³⁸ *P. S. C. Md.*, XVII, p. 112.

³⁹ *Miles v. P. S. C.*, 151 Md. 337, p. 339 (1926).

⁴⁰ *P. S. C. Md.*, XVII, pp. 94-95.

⁴¹ *Miles v. P. S. C.*, 151 Md. 337, p. 344 (1926).

⁴² *P. S. C. Md.*, XIX, pp. 36-37.

mission ruled against it. It was contended on behalf of the company that the tax on its use of the city streets was fixed in 1889, that the rentals then fixed were a fair price for the use of the property, and further that there had certainly been substantial enhancement in value between that year and 1913. This increase in value, the company asked to have included in its rate base. The Commission decided, however, that the annual taxes on the use of the city streets completely absorbed any value which might be attached to the easements.⁴³ This case was not carried to court.

The question of including easements in the rate base recurred before the Supreme Court of the United States in the United Railways case of 1929-1930. The majority of the Supreme Court, in that case, refused to attack the inclusion of easements, although Justice Brandeis, in a dissenting opinion, concluded that the return should be computed on the value of the properties without the easements.⁴⁴

The next item to be considered is the "construction overheads." The Commission has refused to regard this group as "intangible," and has considered them to be just as much a part of actual cost of the property as the labor and material, "the directly distributed costs." The Commission preferred to reserve the term "intangible" for organization and "going value."⁴⁵

The items considered by the Commission as "construction overheads" were classified by it into three groups, in the telephone case of 1916.

Group a

Omissions and Contingencies

Group b

Engineering and Superintendence

Taxes During Construction

General Executive and Legal

Insurance During Construction

Group c

Interest During Construction

Items in Group "a" were to be expressed as percentages of "directly distributed costs" of the physical property. Items in

⁴³ *Ibid.*, VII, pp. 182-189.

⁴⁴ *West v. United Railways & Electric Co.*, 280 U. S. 234 (1930).

⁴⁵ *P. S. C. Md.*, VII, pp. 161, 162.

Group "b" were to be expressed as percentages of the sum of Group "a" and the "directly distributed costs." Items in Group "c" were to be expressed as percentages of the sum of Groups "a" and "b" and the "directly distributed costs." In the telephone company case of 1916, in which this method of ascertaining "construction overheads" was fully set forth, the Commission allowed 17.67% of the "directly distributed costs."⁴⁶ This elaborate analysis was not very extensively used in other cases.

In the United Railways valuation, finally adopted in 1926, overheads amount to over 22% of reproduction value.⁴⁷ To be consistent with its ruling in the telephone case, the Commission should have based its deduction for the depreciation on the total of overheads and directly distributed costs. It failed to do so, and used only the directly distributed costs as the basis for accumulated depreciation. As a result, overheads represent over 26% of the depreciated value of the "directly distributed costs."⁴⁸

Although the determination of "construction overheads" may be based on a fairly understandable technique, in the case of "going value" the regulatory body must rely almost entirely on conjecture.

"Going value," "development cost," "cost of establishing the business" are all terms "intended to express that added value which enures to a plant as a going concern over and above the sum of the value of its component parts viewed independently of the whole." In the telephone company case of 1916, the utility urged the inclusion of "promoters remuneration" as a part of "going value," but the Commission rejected this claim on the ground that the amounts embraced by this item had already been recovered by the company in its rate schedule.⁴⁹

The Commission in turn analyzed "going value" as made up of two elements:

- (a) "the actual cost of organization, securing customers and building up the business"
- (b) "any deficiency in a fair return suffered by the stockholders during the period of the company's early growth."⁵⁰

⁴⁶ *Ibid.*, pp. 162, 193.

⁴⁷ *Ibid.*, XVII, opposite p. 96.

⁴⁸ *Id.*

⁴⁹ *Ibid.*, VII, p. 194.

⁵⁰ *Ibid.*, p. 198.

In the telephone case, the Commission refused to make any allowance for the second element. It considered the claim entirely too speculative and of doubtful validity. Furthermore, it asserted that there was no evidence in the case upon which such an allowance could properly be computed. The first element, on the other hand, was given due consideration, for it approximates what is generally known as organization expense. The Commission considered this to be represented by two items: the first, a further allowance for omissions and contingencies, and the second, the cost of establishing the utility's service connections. For the first item, the Commission permitted 2% of the reproduction cost new of the properties in use. For the second item, an allowance of \$5.00 for each telephone station was included. The result was an allowance of \$705,000, but the Commission was careful to state that the method used in this case to arrive at "going value" was not to be considered as approved for all future cases.⁵¹

In the United Railways case, the Commission adopted 121½% of the value of the physical property and overheads. No attempt was made to explain the selection of this percentage.⁵² In other cases the Commission refrained from over-refinement of "going value," and seemed content with merely making decisions. In the Baltimore County Water and Electric Company valuation case, 3% was allowed.⁵³ "Promotion" and "cost of money" were accorded a separate allowance of 5%, in addition to 10% for "going value," in the Salisbury Light, Heat and Power Company case.⁵⁴ The year following this case, 1920, the Commission allowed 2% in one case, and 3% in another for "going value."⁵⁵ In all of these cases, the Commission appeared to find a close relation between "going value" and the number of service connections. Wherever the Commission found that the determination of "going value" added nothing to the solution of the questions in a case, it was given no consideration.⁵⁶ In one instance, the Commission made no separate valuation for "going value," but merely considered all the various valuations submitted, as estimates, and arrived at "fair value" only.⁵⁷ In a recent valuation case before the Com-

⁵¹ *Ibid.*, pp. 198-203.

⁵² *Ibid.*, XVII, p. 88.

⁵³ *Ibid.*, VIII, p. 201.

⁵⁴ *Ibid.*, IX, p. 165.

⁵⁵ *Ibid.*, X, pp. 189,224.

⁵⁶ *Ibid.*, XII, p. 123.

⁵⁷ *Ibid.*, XVIII, p. 91.

mission, in 1929, it permitted the inclusion of 7% of the value of the physical property as "going value."⁵⁸

Although the Commission has apparently regarded "going value" as remaining constant, once it has been determined, the Federal Court has applied the theory of changing value to it, as well as to other property. This theory permits the company to earn a return on the appreciation of "going value."⁵⁹

The allowance for working capital, which is now to be considered, has not proved an outstandingly difficult problem. Even when a difference of opinion may exist concerning it, the total amount involved is relatively too small to merit grave attention. The theory is that this item should be large enough to represent the requirements of the company, with due regard to cash balances, accounts receivable, accounts payable, and supplies of all sorts to meet current needs.⁶⁰

The remaining item of reproduction cost to be considered is the ascertainment of the deduction for depreciation. If the appraisal of property represents its value when new, whereas actually it has depreciated, some deduction should be made for this decrease. The law fails to prescribe any compelling method for ascertaining the depreciation reserve, and the Commission is, therefore, thrown largely upon its own resources.

Inasmuch as the Commission is dealing with reproduction rather than with original cost, the depreciation reserve on the public utility's books is also of little assistance. In the telephone company case of 1916 and the Havre de Grace Bridge case, the Commission selected a percentage which represented the composite depreciation of the property,⁶¹ but the better method, and one which is more generally followed by the Commission is the ascertainment of depreciation on each item of reproduction cost.⁶²

Two more factors remain to be considered before arriving at "fair value." They are the amount and market value of the securities outstanding, and the value of the properties as expressed by their earning capacity. Neither of these subjects generally receives very extended consideration by the Commission.

⁵⁸ *Ibid.*, XX, p. 200.

⁵⁹ *C. & P. Tel. Co. v. P. S. C.*, 3 Fed. (2d.), pp. 938, ff.

⁶⁰ *P. S. C. Md.*, VII, p. 163; *Ibid.*, X, p. 219; *Ibid.*, XVII, p. 86.

⁶¹ *Ibid.*, VII, pp. 180, 434.

⁶² The best illustration of this method is the United Railways valuation of 1926 *Ibid.*, XVII, opposite p. 96.

The ascertainment of the par value of outstanding securities presents no particular problem,⁶³ and, therefore, where the securities were unlisted and the market value indeterminable, stocks and bonds have been taken at par value only.⁶⁴

Although earning capacity is obviously the most unsatisfactory criterion of "fair value," it was considered pertinent by the Maryland Commission in the telephone company case of 1916. The Commission found, that by capitalizing the earnings of the company for the year 1914, at 6%, it arrived at a value approximately equal to the reproduction cost of the company's property.⁶⁵ In subsequent cases, the Commission has, however, displayed little concern with earning capacity as an element of "fair value."

Theoretically, at least, the rate and valuation investigation should furnish the Commission with a series of values, ascertained independently, which should be a guide to the establishment of "fair value" for rate making purposes. The various values ascertained are:

- a. Original cost.
- b. Reproduction cost (direct costs + construction overheads + working capital + easements + going value — depreciation).
- c. Amount and market value of securities.
- d. Earning capacity.

No royal method for concocting these ingredients into the final product exists, but in Maryland an important statutory provision places a limit on the discretion of the Commission. In the section dealing with valuations, the law provides that, "Every such valuation shall be so made and ascertained by the Commission that as far as possible it shall not disturb the value of bonds of said corporation issued prior to April 5, 1910."⁶⁶

The Commission was confronted with the interpretation of this section so early as 1913. The meaning was held to be not quite clear, but it was, nevertheless, decided that "in the absence of a wide discrepancy between the ascertained value of the property and the par value of the bonds issued against it, indicating either a grossly depreciated condition or uncon-

⁶³ *Ibid.*, VII, pp. 204, 205; *Ibid.*, XVII, p. 89.

⁶⁴ *Ibid.*, VIII, pp. 196, 197; *Ibid.*, X, pp. 189, 213, 214; *Ibid.*, XI, p. 95.

⁶⁵ *Ibid.*, VII, pp. 206-209.

⁶⁶ *An. Code, P. G. L.*, 1924. Art. 23, Sec. 385.

scionable financial operations, the value of the bonds shall be protected.”⁶⁷ The Commission had occasion to consider again the meaning of this statute in 1919 in the case which involved rate making for the United Railways. The Commission expressed itself as reluctant to sanction an inflexible rule that the par value of the bonds should be taken as the minimum value of the property, but felt that the action of the Commission should be so taken as not to prejudice the value of the utility’s securities in the hands of the public.⁶⁸

It has already been pointed out that the Commission has consistently maintained that the task of establishing the rate base is not a purely mathematical operation, but rather an equitable process in which numerous conflicting factors must be given weight. Some set-back was given to this doctrine of “fair value” as a special process for rate making purposes in the decision of the Court of Appeals in the Havre de Grace Bridge Company case. In that case, the Commission proceeded to deal with a difficult technical problem in what it considered to be an equitable manner. The bridge had been acquired by the corporation for a small stock issue. The property which might be expected to have a normal operating life of fifty years, was approximately that old at the time of the investigation. After giving due weight to reproduction value, and all the surrounding circumstances, the Commission ordered a value for rate making purposes of \$250,000.⁶⁹ The court appeared to be particularly incensed by the use of the term “value for rate making purposes,” and declared that, “it would tend not only to work an injustice, but to render absurd a proposition that the property of a public service corporation might have one value in fact, another for the purposes of rate making, and a third for the purposes of taxation, in the absence of statutory provision such as obtains in some states, that for taxation purposes property is to be assessed at only a given percentage of its real value. What the Commission in this case is authorized to ascertain under the section referred to was the fair value of the property.”⁷⁰

The ambiguous language of the Court of Appeals in the above case required construction in a later case when the court

⁶⁷ *P. S. C. Md.*, IV, p. 53.

⁶⁸ *Ibid.*, X, p. 48.

⁶⁹ *Ibid.*, VII, pp. 417, ff.

⁷⁰ 132 Md. pp. 26-27. The “section referred to” in the quotation is the provision in the statute applicable to valuations. *An. Code, P. G. L.*, 1924, Art. 23, Sec. 385.

ruled that it was improper for the Commission to include easements in the rate base at the amount fixed in the tax assessments.⁷¹

It is impossible to state a general rule which invariably guides the Commission in making the step to "fair value" from the series of values, which it has ascertained in the course of its investigation. The principle motive, as repeated frequently by the Commission, is to ascertain a value which will assure fair rates to the public and a fair return to the utility. If it appears that the reproduction value is given more than proper weight, this practice, also, may be explained. Of the four values enumerated as factors of "fair value," the really potent factors are reduced to two. "Earning capacity," no matter how independently ascertained, is unsatisfactory. At best, it may serve as a gauge for the final value selected. The same criticism applies to the amount and market value of securities. This leaves the Commission a choice between original cost and reproduction value. Cumbersome as it is, reproduction value possesses the virtue of being frankly an estimate, whereas, although original cost bears the label of certainty, its determination requires just as great resort to conjecture.⁷² Of these two, reproduction value has generally proved the favorite of the courts, and consequently of the commissions.⁷³

Two further points must be made with regard to "fair value." One is the fact that in a number of rate cases the determination of "fair value" was not controlling, and the second is the significance which the Commission has attached to the necessity for a public utility to earn its fixed charges. The second consideration, in many instances, necessarily relegates to the background fair return based upon "fair value."

⁷¹ 151 Md. 345. "It is contended by the appellees that the language employed by this Court in *Havre de Grace Bridge Co. v. Public Service Commission*, 132 Md., at page 26, is in conflict with the view just expressed, but we do not so interpret that decision. By the language employed the Court meant that it would be absurd to hold that the Public Service Commission had authority to fix a different valuation for different purposes; but that when the Commission ascertained the fair value of the property of the corporation, that ascertainment was conclusive for every purpose for which the Commission could make a valuation. It could not be properly interpreted to mean that if the Commission ascertained the value for rate making purposes, this valuation was conclusive and binding upon all other public officials of the state whose duty it might be to make a valuation for a totally different purpose."

⁷² For an excellent criticism of "original cost" see *P. S. C. Md.*, IX, pp. 167-168.

⁷³ *C. & P. Tel. Co. v. P. S. C.*, 3 Fed. (2d), pp. 944-948

As to the first point, the most striking illustration is the fact that the fares of the United Railways were increased from five cents to eight cents flat, or two for fifteen cents, before the completion of the valuation of the utility's property.⁷⁴ In a number of other cases in which complaints were filed, the Commission was able to substantiate its conclusions by reference to the earning statements of the public utilities, without relying too heavily upon "fair value."⁷⁵

The reliance upon the requirements for fixed charges rather than "fair value" in determining the proper return to a public utility is clearly illustrated in the United Railways cases.⁷⁶ This necessity had been recognized as early as 1913 in the gas company case, and it is closely related to the need for sound credit by a public utility as an adjunct to adequate service.⁷⁷

Even in the celebrated rate case of the United Railways and Electric Co., of 1928-1929, the question of "fair value" played a comparatively minor part. After some delay on both sides, the Commission simply accepted the valuation of the property of the utility which had been fixed for December 31, 1923. The Commission, thus, disregarded questions of replacements, additions, retirements, and fluctuations in price levels.⁷⁸ Thereafter, the significant issues in the case concerned the method of calculating depreciation, and the proper rate of return to which the utility was entitled.

⁷⁴ This increase covered a period of about five years, and was accomplished in four stages. The fare was increased to six cents, six and a half cents, seven cents and two for fifteen cents, respectively. (*P. S. C. Md.*, X, pp. 56, 292, 359; *Ibid.*, XV, p. 112).

⁷⁵ *Ibid.*, V, pp. 65, ff.; *Ibid.*, XI, pp. 93, ff. Two quotations from the opinions in the cases referred to might emphasize this point. The italics are the author's. "The real problem is that of establishing a rate which will provide revenues sufficient to meet the *actual requirements* of the company and at the same time prove just and reasonable to the users of gas." *Ibid.*, XII p. 123. "Even with the maximum economies in operation which may be effected, the rates herein established by the Commission will not, and cannot, yield more than a fair return to the owners on the basis of either of these valuations, nor in fact on any other value which the Commission might reasonably establish, and consequently *it does not appear necessary for the purposes of this case for the Commission to establish either the exact fair value of the respondent's plant or the maximum permissible rate of return to be allowed on such value.*" *Ibid.*, p. 161

⁷⁶ *Ibid.*, X, p. 48; also p. 284. These cases were disposed of in 1919.

⁷⁷ *Ibid.*, IV, pp. 54, ff.

⁷⁸ *Ibid.*, XIX, p. 74.

EARNINGS AND EXPENSES OF THE PUBLIC UTILITY

The next question in rate making to be considered is the determination of the income of the public utility. Here, again, no attempt will be made to discuss the theories in detail. The problem facing the Commission is the ascertainment of probable revenue on the basis of existing rates, new rates, or a hypothetical set of rates. From the income so estimated must be deducted the expenses probably required to produce this return. The difference between the two represents the net income of the utility, and under the legal theory of rate making, this income, so as not to be confiscatory, should represent a fair return on the "fair value" of the property. In making its estimates, proper consideration must be given by the Commission to the correlation of income and expenses. Failure to make proper allowance for increased expenses, where increased income was prognosticated, was assigned by the Court of Appeals as one of the reasons for setting aside the order of the Commission in the Havre de Grace Bridge case.⁷⁹

Many questions may arise in the determination of the probable net income of a public utility, but the two which seem to stand out in the Maryland cases are the ascertainment of allowances for periodical depreciation, and the treatment of payments by subsidiaries to holding companies.

The question of depreciation came to a head with the celebrated United Railways case. The company had been charging depreciation, since 1912, on the basis of 5% of gross revenue. The contention was made on behalf of the company that this allowance was insufficient, and the method of computing it erroneous. The company asked for an allowance of 4% per annum based on the value of its depreciable property. The Commission rejected this contention on the ground that the allowance based on gross revenue had proved sufficient for the needs of the company, even though the method was not unobjectionable. This question was carried through the Court of Appeals and the Supreme Court of the United States. When the case came to the courts, two supplementary aspects of the problem of depreciation manifested themselves. One was the use of reproduction value rather than cost as the basis for calculating depreciation, and the other was the question of making the allowance for depreciation large enough to provide for extraordinary obsolescence. The Court of Appeals sustained

⁷⁹ 132 Md. 16. at p. 31.

the company on the former point, and the Commission on the latter.⁸⁰ The Supreme Court sustained the Court of Appeals in its view, although Justice Brandeis wrote a brilliant dissenting opinion against the use of reproduction value.⁸¹

The problem of original cost versus replacement value as a basis for the depreciation charge, when reduced to its simplest terms, consists merely in the question whether the public or the utility should provide the additional capital required for replacements as the result of increases in the value of the plant. The contention of the majority view clearly implies that once the public utility has furnished any unit of property, all subsequent replacements of that property must be made at the expense of the public. The minority view regards depreciation simply as the basis for compensating the public utility for past outlays, and implies that future replacements, if they require outlays greater than the cost of the original plant, must be financed by contributions of new capital.

The question of the payments made by a subsidiary to a holding company occurred in the rate case of the telephone company in 1924. In the telephone cases which preceded it, in 1916 and 1920, the Commission had not pressed the investigation of the basis of the contract between the local company and the American Telephone and Telegraph Company. Any official sanction of the contract had, however, been withheld.⁸² In the 1924 case the Commission decided to investigate the reasonableness of the contract relationship between the two companies. Two principal points were stressed. The first was the arrangement under which the subsidiary paid to the holding company $4\frac{1}{2}\%$ of its gross revenue as compensation for general management services, and help in financing, engineering, legal and accounting matters. The second point concerned the apportionment of toll charges in interstate telephone calls, between the parent company and the local one. The Commission insisted that the burden of proof rested on the holding company to show the cost of these services to it. In the absence of proof of this cost, the Commission regarded itself as justified in disregarding the corporate entities, and in merging the property and earnings of both companies, and deciding the question of fair return on that basis. The Commission was further convinced of the close interrelationship between the

⁸⁰ 155 Md. 605.

⁸¹ 280 U. S. 254.

⁸² *P. S. C. Md.*, VII, p. 194; *Ibid.*, XI, p. 180.

various companies, by the fact that a loss of three and a half million dollars, incurred in the elimination of the Maryland Telephone Company, a competitor of the local company, was absorbed on the books of the parent company and its New York subsidiary. The American Telephone and Telegraph Company persistently refused to furnish the information requested, and the Commission decided according to the principles enunciated above.⁸³

This issue was carried into the Federal Court, and the order of the Commission was set aside. The court announced its rule of reason and good faith by which intercompany agreements were to be judged. The local regulatory body was precluded from investigating the cost of the service to the holding company, but must consider only the value of the service to the subsidiary. Only manifest bad faith or unfairness, according to the court, would justify setting the contract aside.⁸⁴

The rigor of this decision in the telephone case has been mitigated by a recent opinion of the Supreme Court. The rule stated in this case is that the cost of the services rendered by the parent company must first be ascertained. A *reasonable allowance* may then be allocated to the intrastate business.^{84a}

THE RATE STRUCTURE

The question of net earnings, which has just been considered is closely related to the question of rate structure. As already stated, this is largely a technical field in which the principal burden rests on the utility, guided by the Commission, and in which the courts will seldom, if ever, interfere. The legal theory appears to be that, if the general rate level is sufficient to yield a fair return, the court will not upset some detail in the structure.⁸⁵

The same general equitable principles which have governed the other aspects of the rate and valuation cases also apply here. At times the choice may rest between rates based on the cost of the particular service and a general level of fair charges, as in the fixing of telephone rates for metropolitan and rural

⁸³ *Ibid.*, XV, pp. 255-272.

⁸⁴ 3 Fed. (2d), pp. 957-958.

^{84a} *Smith v. Illinois Bell Telephone Co.* 282 U. S. 133, p. 157.

⁸⁵ See the two United Railways cases. 280 U. S. 234, pp. 252, ff. and 155 Md. 572, pp. 605-607, in which the abolition of the second fare zone for Halthorpe was discussed.

service.⁸⁶ Other examples of the problems of rate structure are found in the orders for decreased rates in the Consolidated Gas, Electric Light and Power Company cases since 1923. No cost records were available, and the conflicting interests in these reductions were represented by industrial users on the one hand, and domestic on the other, between city and suburban, between gas and electric, and between primary and secondary users. In fixing these reductions the Commission attempted to keep the conflicting interests in mind and to meet them in succession.⁸⁷

Every valuation and rate case presents one or more aspects of the problems of rate structure. Even if cost records might be of assistance in fixing rate schedules, they could never be controlling factors, because of the equitable nature of the proceeding. A losing operation may be required in order to provide service, and excessive earnings in one department might justifiably be offset by losses in another.

THE RATE OF RETURN

The final point to be considered in this chapter is the rate of return. On this subject, also, no generally serviceable criterion exists. The Commission has generally adopted an area between 6% and 8% as fair.⁸⁸ Where the earnings of the utility have been in excess of 8% the Commission has usually ordered a reduction of rates.

The aim of the Commission is to fix a rate, which will yield a fair return to the public utilities. The legal rate of interest, the requirements of the public utility, the risks involved in the business, the earnings of other enterprises in that territory are all factors to be considered. Furthermore, as the Commission has pointed out, a rate which barely escapes confiscation may fail to yield a return sufficient to assure safe, adequate, efficient service, and a company soundly financed. The fact that a company fails to earn a fair return does not imply that it will invariably ask for an increase of rates. The fear of a prohibitive rate and sound economic management may deter it from that course.

⁸⁶ *P. S. C. Md.*, XI, pp. 182, ff.

⁸⁷ *Ibid.*, XIV, pp. 100, ff.; *Ibid.*, XVII, pp. 237, ff.; *Ibid.*, XX, pp. 245, ff. At one time a voluntary reduction of rates by the company was met by an investigation by the Commission, and an order for further reductions. *Ibid.*, XVII, p. 242.

⁸⁸ *Ibid.*, VII, p. 439; *Ibid.*, VIII, p. 209; *Ibid.*, X, pp. 190, 227.

The question of rate of return has been fully considered by the courts in the telephone case of 1924, and the United Railways case of 1928-1929. In the former case, the Federal District Court ruled that a return of 6% was not confiscatory.⁸⁹ In the latter case, the Maryland Court of appeals maintained that a return of 6.26% was not confiscatory.⁹⁰ This latter conclusion was overruled by the Supreme Court, in its decision that the company was entitled to earn at least 7.44%, computed according to the principles decided by it.⁹¹

⁸⁹ 3 Fed. Rep. (2d) p. 953.

⁹⁰ 157 Md. 70.

⁹¹ 280 U. S. 234, p. 251, ff.

CHAPTER VIII

CONCLUSIONS

A few broad generalizations may be ventured after this examination of the Public Service Commission of Maryland.

The chief activity of the Commission does not consist in valuation and rate cases. The day to day affairs concern far less dramatic material. Petty complaints, security issues, permits for public transportation by motor vehicles, the extension of equipment and services, and other more or less perfunctory duties form the larger part of the practice of the Commission. The discretion, which may be exercised by the Commission in these cases, is not very great. The Commission serves an important purpose, however, in the function of the public repository of the records in these cases, as well as of the numerous other reports, which the public utilities are required to file with it. It is impossible to weigh precisely the value of this publicity, but it is certainly desirable, and in keeping with standards of business professed today. Furthermore, a great deal which might appear trivial or inconsequential in itself, may furnish substantial data in a more important case at another time.

Another conclusion, which becomes prominent in any survey of this organization, is that the Commission is a legal body and that it must act within the limits imposed upon it by law. Attempts to extend its power can be, and have been, promptly curtailed by the courts. Orders requiring utilities to extend equipment or services have been reversed on appeal to the judiciary. What was doubtless an excellent decision, namely, the telephone case of 1924, because it attempted to deal with the economic fact of a holding company and its subsidiary as a single unit was promptly upset by the Federal District Court. Much of the blame, which has been directed against the Commission, might, in fact, be laid at the door of the courts.

Much could be gained in the efficiency of regulation, perhaps, by curtailing or abolishing the right of appeal to the federal courts. This change would lead to the saving of much time and money, and what is even more important, result in a clearer placing of responsibility for regulation. This suggestion is not leveled at the federal control of interstate utilities,

or holding companies, but is intended to apply exclusively to the regulation of intrastate business.

Another fairly obvious, but essential, consideration to be borne in mind is that a utility commission does not set the economic stage in which it acts. Public utilities are subject to all the exigencies and risks of business, and even though they are regulated, they are still private enterprises. The utility commission is unable to create custom or profit for them by fiat. The general legal principle that a public utility is entitled to earn a fair return on the value of the property which it devotes to the public use will not make the business of a municipal street railway or an interurban electric line a profitable one today.

This disparity between the operation of economic norms and legal pronouncements is well illustrated by the street railway situation in Baltimore. The utility furnishing this service now receives a ten cent car fare. Even at that rate it is at present unable to earn its fixed charges. It is probably entitled to a fifteen cent fare if it could show that such a fare would result in an increase of income. But, even the ten cent fare brings the utility into competition with cheap taxicabs. The taxicab with a minimum rate of twenty-five cents is an economic factor, which renders absurd a request for an increased fare by the utility. Such an increase could not possibly result in more income; it would merely attract more taxicabs. The cheap taxicab may be abnormal, it may be the result of the depression, but it illustrates a genuine competitive force in a field generally considered as a regulated monopoly.¹

When the charges of a utility have reached this sort of "economic maximum," and the utility still continues to lose money, the law, in itself, is helpless to remedy the situation. If the utility is essential for the public welfare the solution lies between government ownership and a subsidy of some sort. The subsidy may be direct, as by a contribution, or it may be indirect, as by the reduction of taxes, or by the assumption of a part of the funded debt, or the interest on the debt. If the utility has ceased to be essential, or governmental agencies are unwilling to acquire the utility or unable to grant the subsidy, the property must be abandoned and the loss must fall upon the security holders.

¹ The conflict is not restricted to the normal competition of taxicab and street railway. The taxicabs cruise along street car lines and accept passengers for a ten cent fare. This sort of competition is all the more successful, because the street railways have curtailed service on account of impaired earnings.

The central problem in public utility regulation still concerns the rule laid down in *Smyth v. Ames*. This ruling has been attacked by almost every writer in the field, and by minority decisions of the United States Supreme Court, because it is so vague as to be practically meaningless. But, probably for that very reason, it has been retained by the courts. This rule has introduced a mystic entity called "fair value." "Fair value" has been declared to exist, and to be discoverable, although different from every other more clearly definable value with which it might be confused. In practice, however, it has been found to be a mere makeshift, identified at one time with the par value of outstanding securities, at other times, with reproduction value, with original cost, or with none of these. It may have been a means of working out the true equities of the case, but it has, also, no doubt, served as authority for what might, otherwise, have been indefensible conclusions.

Another serious objection to the doctrine of "fair value" is that it carries with it the implication that a public utility is entitled to a return at some fixed rate on this value. No logical or valid reason has been produced why a single rate should be applied to the entire value of the utility's property in arriving at the "fair return." The idea that certain types of business earn a so-called normal return is too ephemeral for a world of economic realities.

This objection to the application of a single rate to a broad base in arriving at a "fair return" also applies to much of the discussion concerning the "prudent investment" theory. It seems that a greater approximation to the realities of the situation could be achieved if a little less emphasis were placed upon the corporate entity. A return to a public utility is, in fact, the return which it is entitled to earn for the benefit of those who have provided its capital.

The securities of the public utility outstanding would seem to furnish an approach to the question of "fair return" more sound than any so far adopted by the courts. With the exception of common stocks, securities generally bear a fixed rate of interest or a fixed rate of dividends. The Commission has had ample opportunity to acquaint itself fully with the circumstances surrounding the issuance of these securities. In a rate case, the Commission should, therefore, be able to say whether or not the utility be permitted to earn a return on each issue of bonds or stocks, bearing fixed dividends, outstanding. If the return on any issue were disallowed, the grounds should be

clearly stated, and the matter would then be reviewable by the courts. This leaves for determination only the rate of return on the common stock. The factors to be considered in this determination should be changes in the general price level, past earnings of the utility, the value of the service which it renders, the efficiency of its management, the risk involved, the profits permanently reinvested in the enterprise, the dividend history of the stock, and the requirements for maintaining the credit of the utility.

Inasmuch as the investment represented by the common stock is generally only between 20% and 50% of the capital of the utility, the first result which this method would accomplish would be to reduce materially the field within which the Commission must exercise its discretion. It would, also, compel the Commission to show clearly and intelligibly how it arrives at the "fair return" which a utility may be entitled to earn.

This suggestion for a basis for ascertaining "fair return" is offered as a substitute to the concoction of "fair rate" and "fair value" which is now presumed to be in use. The derivation of "fair value" from reproduction value, original cost, par value of securities, and market value of securities is the merest hocus-pocus. It is a fiction of a vicious sort.

A serious difficulty may be encountered in future rate cases by the use of the traditional method. Courts have made reproduction value and "fair value" practically synonymous. Due to the decline in wages and commodity values, public utilities will be forced to seek bases other than reproduction value for sustaining their rate structures. They will try to maintain the valuations of their property by evidences of original cost or security values. The objections to, and the difficulties in the way of, the use of original cost have already been pointed out. Furthermore, security values will certainly throw little light on the solution of the problem. The par value of outstanding securities has seldom been of great help. As to the other choice, it is absurd to speak of the market value of a million shares of stock at a given moment—unless an offer for them has actually been made. Courts may select one or the other of these alternatives for sustaining their decisions. If the decisions are sound, however, they will be based, not on these alternative values, but on the *needs* of the public utility. If the alternatives are rejected, the resulting decision may be based on a frank consideration of the requirements of the utility in terms

of fixed charges, dividends, and a return on common stock outstanding.

A change to this method, furthermore, will be a definite step in the direction of better understanding between the public and the utilities. Requirements for fixed charges, dividends, and surplus seem clearer and more easily justiciable than "fair value" and "fair rate of return" based on "fair value." This change might also be expected to carry with it a greater emphasis by commissions on the accounting records of the utility. For, by practically eliminating physical appraisals, more attention than before must be placed on the proper allocation of expenditures between operating and capital accounts. By keeping themselves fully informed of the operations of the utility, and with a comparatively feasible method for determining "fair return," utility commissions may correct excessive earnings of public utilities by a prompt reduction of the rate schedule. This advantage is not unilateral, for the public utility, also, will be in a position to ask for and obtain relief promptly when it is needed, as it will be able to set forth the basis of its claims.²

Closely related to, and largely relying upon the theory of reproduction value as the basis for "fair return," has been the argument for depreciation based upon reproduction value. This contention has been sustained by the Supreme Court of the United States, although, the practice amounts, in fact, to a tax for capital contributions levied upon the customers of a public utility. The most that a public utility should be permitted is an opportunity to recover out of earnings the capital invested in fixed assets, by the time that the useful life of these assets is exhausted. This result would be accomplished by permitting the utility to deduct a fair allowance for depreciation, based upon the useful life of the asset, its cost, and its residual value. In a case, in which the cost of equipment could not be determined, it would have to be approximated.

The regulation of public utilities cannot be reduced to a few simple rules. The exercise of discretion by the Commissioners will always be necessary. New problems are always arising which do not fit into the accepted categories. But when a given category has lost its usefulness, it may appropriately be discarded.

² In many cases, other than the example furnished by the street railways, fair return on reproduction value merely expresses a maximum, which is never likely to be reached. Thus in rate cases, fair value becomes a sword rather than a shield in the hands of the utilities.



APPENDIX

THE UNITED RAILWAYS AND ELECTRIC COMPANY

Following the decision of the Supreme Court of the United States rendered on January 6, 1930, the Public Service Commission of Maryland allowed the United Railways and Electric Company a flat fare of ten cents per passenger. For a period of more than two years now, the utility has operated with this rate.

The allegation is frequently made that the fare of the United Railways and Electric Company should be reduced. At the same time the utility has encountered serious financial difficulties. It has been forced to appeal to Baltimore City for relief from the 9% gross receipts tax upon its easements. This tax is generally referred to as the park tax. A few salient facts must be kept clearly in mind in carrying on any discussion of these subjects.

A brief outline of the facts and possibilities involved is set forth in this appendix under the following three headings:

- I. The Essential Features of the Present Set-up.
- II. Changes Required under the Present Set-up Before There Could Be Any Reduction in the Rate.
- III. Changes in the Present Set-up Which Might Permit a Reduction in the Rate.

I. THE ESSENTIAL FEATURES OF THE PRESENT SET-UP

(a) The courts and the commission have placed a value of \$75,000,000 on the property of this company. This amount may be analyzed approximately as follows:

Plant and Buildings	\$45,500,000
Land and Rights of Way.....	2,000,000
Construction Overheads	12,500,000
Working Capital	1,500,000
Going Value	8,500,000
Easements	5,000,000

(b) According to the Supreme Court decision, the company is entitled to earn a return of 7.44% on this valuation of \$75,000,000. This return would amount to \$5,580,000.

(c) According to the decision, the company may annually treat as depreciation expense 3.6% of the value of the plant and buildings. This amounts to \$1,638,660 each year.

(d) The company has a funded debt of approximately \$53,000,000 and income bonds of \$14,000,000. The annual amount of interest on the funded debt, the income bonds, the unfunded debt, and other charges against income for the years 1929, 1930, and 1931 has been about \$3,400,000.

(f) The net operating income of the company and the amount transferred to surplus in the last three years have been as follows:

<i>Year</i>	<i>Net Operating Income</i>	<i>Amount Transferred to Surplus</i>
1929	\$3,729,214.92	\$542,387.27
1930	3,558,379.95	413,268.44
1931	2,244,472.12	665,648.77 *

* Deficit.

The deficit, for the year 1931, was arrived at with provision made for only five months' interest on the income bonds of \$14,000,000. If provision had been made for the entire year, the deficit would have been \$325,000 more, or close to \$1,000,000.

II. CHANGES REQUIRED UNDER THE PRESENT SET-UP BEFORE THERE COULD BE ANY REDUCTION IN THE RATE

(a) The minimum which could be used as the basis for a return to the utility would have to be no less than \$3,400,000 in order to take care of the present requirements for fixed charges and other charges against gross income. Such a return would be less than 5% of the present value of the utility according to the Commission and court decisions, and is over \$1,000,000 more than it earned in 1931, under the present fare.

(b) If a reduction in the depreciable basis from \$45,500,000 to \$30,000,000 were effected the reduction in the depreciation charges, at the present rate of 3.6%, would be approximately \$558,000. While this saving might be theoretically correct, it may be doubted whether the depreciation charges so provided will be sufficient to meet the needs of the utility. The present reserve for depreciation has failed to show the alarming increase which the Public Service Commission at one time anticipated.

(c) The most flexible opportunity which the present set-up offers is the annual park tax, of about \$1,000,000, on the public

utility. Any reduction of this tax would rebound directly upon the taxpayers of Baltimore City. With the present set-up it is doubtful whether even a complete extinction of the park tax would be of any help in reducing the rates. It would help, however, in improving the financial condition of the utility. In 1931, even if no park tax had been paid, the United Railways would have had sufficient gross income just to meet its requirements.

(d) Improvement in the revenue from transportation is desirable. In 1930 revenue showed a decline of 3.38% as compared to 1929, and in 1931, it showed a decline of 13.48% as compared to 1930. The latter decline is due in part at least to the depression. Another important factor is the operation of cheap taxicabs. This latter situation could be met only by requiring the taxicabs to charge much higher rates than those for which they are willing at present to operate.

(e) The Public Service Commission has frequently called the attention of the public utility to its unfortunate financial set-up, and the fact that about 75% of its capital is raised by bond issues and only 25% by capital stock. There has never been any revision of this situation, and it may be doubted whether it will ever be effected by the voluntary action of the utility and its bondholders. The item of fixed charges at present definitely stands in the way of any legal reduction in rates.

(f) With the present volume of its business, any change in the income of the utility, in the tax burden of the utility, or even in the fixed charges of the utility under the present set-up is not likely to be sufficient to permit a legal reduction of the ten cent carfare.

III. CHANGES IN THE PRESENT SET-UP WHICH MIGHT PERMIT A REDUCTION IN THE RATE

(a) A radical change in the set-up of the utility sufficient to attain a reduction in rates would require either substantial concessions on the part of the bondholders and the stockholders, or else some form of municipal aid. Any plan here suggested is frankly based on conjecture, but may help to illustrate the enormous changes required.

(b) Concessions on the part of the bondholders and the stockholders might be achieved under some such plan as the following. A reduction might be effected in the par value of

common stock, and income bonds so as to reduce their par value from \$34,000,000 to about \$5,000,000. The funded debt which amounts to about \$53,000,000 might be reduced to about \$40,000,000 and exchanged for about \$30,000,000 in new bonds, and \$10,000,000 of non-voting common stock. The new bonds of about \$30,000,000 might bear an average of 5% interest. The outstanding capital stock would, thus, be about \$15,000,000. The fixed charges on bonds by this method would be reduced to \$1,500,000 in place of about \$2,500,000 now required. A further saving might be then effected by a reduction of the park tax. Its complete forgiveness would amount to about \$1,000,000 per year. The depreciable base might be reduced to about \$30,000,000, and a further saving of about \$500,000 would result in depreciation charges. If the charges proved insufficient to take care of replacements, additions would have to be financed by new bond or preferred stock issues. The changes herein outlined might effect a saving of about \$2,500,000 in the utility. Even with a saving of this size, it is doubtful whether a legal reduction of more than 20% could be procured in the street car rates, if the revenue passengers carried were no greater than in the year 1931.

(c) Under a program of municipal coöperation or ownership more sweeping changes might be effected. If Baltimore City could purchase all of the outstanding bonds of the utility for about \$25,000,000 and use these bonds as collateral for a 4% stock issue, the charges would amount to \$1,000,000 per year. The city might then charge the utility only the amount necessary to pay interest on this stock issue. In consideration of the municipal aid of this type, the stockholders might be required to transfer one-half of their stock to the city in order to protect the public interest in this enterprise. The People's Counsel, and the Auditor of the Public Service Commission might be permitted to make an annual investigation. In addition to the savings in the fixed charges of about \$1,500,000, the city would also have to surrender the park tax of about \$1,000,000 and the depreciation charges might be reduced about \$500,000. This method would accomplish a saving of approximately \$3,000,000. Even with such radical changes and the slashing of fixed charges, a five cent fare looks quite remote. The problem of increased income is hardly touched, but some upturn might certainly be expected from improved business conditions or the reduction of fares.

TABLE OF CASES AND INDEX

TABLE OF CASES

	PAGE
Baldwin <i>v.</i> Pub. Serv. Com., 160 Md. 202.....	118
Bay Bridge Corporation <i>v.</i> County Com. of Queen Anne's Co., 160 Md. 398	22
Benson <i>v.</i> Pub. Serv. Com., 141 Md. 398.....	34, 119
Bluefield <i>v.</i> Pub. Serv. Com., 262 U. S. 679.....	138
Bush <i>v.</i> Maloy, 267 U. S. 317.....	28, 126
Bush <i>v.</i> Pub. Serv. Com., 143 Md. 570.....	28, 119
Byron <i>v.</i> Pub. Serv. Com., 153 Md. 464.....	33, 119
Carter <i>v.</i> Suburban Water Co., 131 Md. 95.....	29
Chenoweth <i>v.</i> Pub. Serv. Com., 143 Md. 622.....	22, 118
C. & P. Tel. Co. <i>v.</i> Pub. Serv. Com., 3 Fed. (2d) 938..	126, 142, 148, 151, 155, 157
City & Suburban R. R. Co. <i>v.</i> W. W. & G. R. R. Co., 122 Md. 655.....	33
Cons. Gas El. Lt. & Pr. Co. <i>v.</i> Balto. City, 101 Md. 541.....	144
Coöperative Assn. <i>v.</i> Baughman, 153 Md. 297.....	27
Crisfield <i>v.</i> C. & P. Tel. Co., 131 Md. 444.....	22
Des Moines Gas Co. <i>v.</i> Des Moines, 238 U. S. 153.....	137
Electric Pub. Utilities <i>v.</i> Pub. Serv. Com., 154 Md. 445.....	34, 119
Goldsworthy <i>v.</i> Pub. Serv. Com., 141 Md. 674.....	27, 121
Gregg <i>v.</i> Pub. Serv. Com., 121 Md. 1.....	22, 118
Hagerstown <i>v.</i> Littleton, 143 Md. 591.....	21
Havre de Grace Bridge Co. <i>v.</i> Pub. Serv. Com., 132 Md. 16.....	118, 151, 153
Homer <i>v.</i> Balto. Refrigerator Co., 117 Md. 411.....	20
Jaffa <i>v.</i> State, 130 Md. 482.....	27
Kelly <i>v.</i> Cons. Gas El. Lt. & Pr. Co., 153 Md. 523.....	33
Knoxville <i>v.</i> Knoxville Water Co., 212 U. S. 1.....	137
Littleton <i>v.</i> Hagerstown, 150 Md. 163.....	21
Miles <i>v.</i> Pub. Serv. Com., 151 Md. 337.....	118, 144, 151
Minnesota Rate Cases, 230 U. S. 352.....	137
Mundon <i>v.</i> Taxicab Co., 151 Md. 449.....	22
Northern Central Rwy. Co. <i>v.</i> Pub., Serv. Com., 122 Md. 355.....	118
Northern Central Rwy. Co. <i>v.</i> Pub. Serv. Com., 124 Md. 141.....	39, 118

Penna. R. R. Co. <i>v.</i> Pub. Serv. Com., 126 Md. 59.....	36, 118
Penna. R. R. Co. <i>v.</i> Pub. Serv. Com., 245 U. S. 6.....	36, 126
Pub. Serv. Com. <i>v.</i> B. & O. R. R. Co., 121 Md. 179.....	32, 122
Pub. Serv. Com. <i>v.</i> Brooklyn El. Water Co., 122 Md. 612.....	38, 118
Pub. Serv. Com. <i>v.</i> C. & P. Tel. Co., 147 Md. 279.....	45, 119
Pub. Serv. Com. <i>v.</i> Cons. Gas El. Lt. & Pr. Co., 148 Md. 90.....	33, 122
Pub. Serv. Com. <i>v.</i> Hancock, 151 Md. 670.....	35, 119
Pub. Serv. Com. <i>v.</i> Kensington Rwy. Co., 131 Md. 649.....	45, 119
Pub. Serv. Com. <i>v.</i> Northern Central Rwy. Co., 146 Md. 580.....	33, 122
Pub. Serv. Com. <i>v.</i> P. B. & W. R. R. Co., 122 Md. 438.....	38, 118
Pub. Serv. Com. <i>v.</i> P. B. & W. R. R. Co., 155 Md. 104.....	40, 118
Pub. Serv. Com. <i>v.</i> Sun Cab Co., 160 Md. 476.....	20, 40, 118
Pub. Serv. Com. <i>v.</i> United Railways & Electric Co., 126 Md. 478.....	39, 118
Pub. Serv. Com. <i>v.</i> Western Md. Dairy Co., 150 Md. 641.....	27, 121
Pub. Serv. Com. <i>v.</i> Wildason, 135 Md. 677.....	27, 121
Restivo <i>v.</i> Pub. Serv. Com., 149 Md. 30.....	27, 121
Realty Improvement Co. <i>v.</i> Cons. Gas El. Lt. & Power Co. 156 Md. 581....	33
San Diego Land & Town Co. <i>v.</i> Jasper, 189 U. S. 443.....	135
San Diego Land & Town Co. <i>v.</i> National City, 174 U. S. 739.....	135, 137
Smith <i>v.</i> Illinois Bell Tel. Co., 282 U. S. 133.....	155
Smith <i>v.</i> Northern Central Railway Co., 119 Md. 481.....	22
Smith <i>v.</i> State, 130 Md. 482.....	27
Smyth <i>v.</i> Ames, 169 U. S. 466.....	135, 136, 161
S. W. Bell Tel. Co. <i>v.</i> Pub. Serv. Com., 262 U. S. 276.....	137
Thrift <i>v.</i> Towers, 127 Md. 54.....	14
Thrift <i>v.</i> Laird, 125 Md. 55.....	16, 17
United Railways & El. Co. <i>v.</i> Pub. Serv. Com., 155 Md. 572...117, 118, 154, 155	
United Railways & El. Co. <i>v.</i> Pub. Serv. Com., 157 Md. 70.....117, 118, 157	
West <i>v.</i> United Railways & El. Co., 280 U. S. 234.....126, 145, 154, 155, 157	
Westminster <i>v.</i> Cons. Pub. Utilities Co., 132 Md. 374.....	22
West Va. & Md. Gas Co. <i>v.</i> Pub. Serv. Com., 134 Md. 137.....	21, 122
Willcox <i>v.</i> Cons. Gas Co., 212 U. S. 19.....	137, 138
Yeatman <i>v.</i> Pub. Serv. Com., 126 Md. 513.....	20, 118

INDEX

- Accidents, reports of, 42; proposed amendment regarding, 54.
- Accounting staff, of the Commission, 60.
- Accounting systems, statutory provisions regarding, 35; proposed amendment, 56-57.
- Acquiring stock in other utilities, 33.
- Administrative powers, of the Commission, enumerated 30-35.
- Amendments proposed, 49-58; organization of the Commission, 50-52; persons subject to jurisdiction of Commission, 52-54; jurisdiction of Commission, 54-57; Miscellaneous, 57-59.
- American Telephone and Telegraph Company, 154.
- Annapolis, amendment regarding gas rates in, 54.
- Annual reports, required, 35-36; penalties for failure to file, 47.
- Appearances by counsel. See Counsel, appearances by.
- Appropriation for Commission, in original bill, 10; under budget system, 18; tables, 66-70.
- Attorney-General. See General Counsel.
- Baltimore City, natural gas proposal for, 2-4; exemption from regulation, 21; contributions to cost of Commission, 16-17, 66-68.
- Benson, Carville D., 8.
- Bond Values, protection of, in Maryland law, 42; in Maryland practice, 149-150. See Valuation, Valuation and Rate Cases.
- Bridge Companies, subject to regulation, 20; number subject to jurisdiction of Commission, 62; as parties to cases before Commission, 89.
- Bruce, William Cabell, 59.
- Chesapeake and Potomac Telephone Co., on the Correspondence and Informal Dockets, 74, 75, 77, 78; on the Formal Docket, 90, 104; in valuation and rate cases, 126, 139, 141, 142, 144, 154, 155, 157, 159.
- Civil status, of applicants in motor vehicle cases, 91, 104; of complainants, 91, 104.
- Commissioners. See Public Service Commission.
- Common carriers, subject to regulation, 20; provisions as to rates of, 22-23; mileage rates, etc., 40; receipts for containers, 40; proposed amendments concerning, 54.
- Complaints, jurisdiction of Commission regarding, 29; in cases before commission, 85-102; on Correspondence and Informal Dockets, 71-78; disposition of analyzed, 105; time intervals elapsing in, 107.
- Consolidated Gas Electric Light and Power Co., natural gas proposal of, 2-4; repeal of its monopoly privileges, 4; rumors regarding, 11, n., in cases on the correspondence and Informal Dockets, 74, 75, 77, 78; in cases on the Informal Docket, 90, 104; in valuation and rate cases, 140, 143, 144, 156.
- Construction overheads, as part of reproduction cost, 141, 149; component parts of, 145-146; practice regarding, 146.
- Correspondence Docket, cases upon, 61; data regarding 71-76; types of cases included 72-73; number of cases, 74-75; time intervals elapsing, 75; disposition of cases upon, 76; summary of, 78.
- Costs, directly distributed, as part of reproduction value, 141, 143, 149.
- Cost of maintaining Commission, general discussion and tables 63-70; contributions toward, 64.
- Counsel, appearances by, in cases on Formal Docket, 100, 108-109.
- Courts, cases in, 115-129; number of cases, 117, 123, 125, 126-127; of original jurisdiction, 117, 123, 124; types of cases, 118, 119, 121,

- 124, 125; time intervals elapsing, 120, 122 125, 126, 127; summary of cases in, 127-129.
- Crothers, Governor, calls cabinet meeting, 2; threatens to veto local bills, 9.
- Democratic platform, 2, n.
- Depreciation, reserve for, in ascertaining reproduction value, 148, 149; of property, as expense of the utility, 137; ascertainment of allowance for, 153-154; basis of, 163.
- Dockets, See Correspondence Docket, Informal Docket, Formal Docket, and S. N. & R. Docket.
- Disposition, of cases on Formal Docket, 92, 105; of cases on Correspondence Docket, 76; of cases on S. N. & R. Docket, 82; of court cases, 119, 122, 125, 126.
- Drinking cups, jurisdiction of Commission concerning, 24.
- Earning capacity, as measure of fair value, 136, 149.
- Earnings and expenses of utility, determination of, for rate making purposes, 137; ascertainment of, 153-155.
- Easements, problem involved in, 143; valuation of, 144; fluctuations in value of, 144-145; distinguished from franchises, 144, n.
- Electric light companies, subject to regulation, 20; number of, 62; as parties to cases on Formal Docket, 89. See Gas Companies.
- Employees' Certificates of Convenience, provisions regarding, 28; amendment to abolish, 54.
- Engineering and Superintendence, as part of construction overheads, 145.
- Equipment, permission to construct, 33; construction of, in cases on Formal Docket, 85-102.
- Express companies, jurisdiction of Commission regarding, 20; proposed amendment concerning, 53; number of, 62; as parties to cases on Formal Docket, 89.
- Extending service, statutory provisions regarding, 33-34.
- Fair return, defined in *Smyth v. Ames*, 135; discussion of, 161-163. See Fair value, Rate of Return.
- Fair value, 136-137; factors determining, 136; ascertainment of, 150-152; discussion of, 161-163. See Bond values.
- Fidelity and surety companies, 52.
- Fees for meters, 55.
- Formal Docket, cases upon, 61; tables and analysis of, 83-114; tables on, enumerated, 83-84; tables, 85-102; types of cases, 103-104; types of utilities, 104. See Public service corporations, Civil Status, Disposition, Time intervals, Witnesses, Counsel, appearances by, Stenographer's Record, Protests, Opinions, Security issues.
- Franchises, value of, in issuing securities, 31-32; abandonment of, 34-35; amendments regarding, proposed, 55, 56; abandonment of, in cases on Formal Docket, 85-102. See Easements.
- Full Crew Law, 40.
- Gas Companies, subject to regulation, 20; prohibitions as to preferences, 23; special provisions regarding, 41; proposed amendments regarding, 58; number of, 62; as parties to cases on Formal Docket, 89.
- General Counsel, salary of, in original bill, 10; provisions regarding, 16; bill to abolish office of, 51; replaced by Attorney-General, 59; appearance in cases on Formal Docket, 100.
- Going value, analysis of, 146; allowance for, in Maryland practice, 147-148.
- Gorman, Arthur P., 5, 11.
- Gorman Bill, 9.
- Grade Crossings, proposed amendments concerning, 56.
- Hagerstown, 21.
- Harper, Frank, 60.
- Harper, J. Frank, 59.
- Havre de Grace and Perryville Bridge Co., valuation and rate case concerning, 118, 141, 148, 150, 151, 151, n.
- Hearings, time intervals occupied by, 96, 106.
- Heat and refrigerating companies, 20.
- Holding companies, proposed amendments concerning, 52; status of Maryland utilities, with regard

- to, 63; payments to by subsidiaries, 154-155.
- House of Delegates in passing regulatory legislation, 6, 7, 8, 9, 10, 11, 12.
- Improvements, statutory provisions regarding, 37; cases concerning, 37-40.
- Informal Docket, cases upon, 61; data concerning cases on, 71-73, 76-79; types of cases included, 72-73; number of cases upon, 76; summary 78.
- Intangible values, 141.
- Interstate traffic, as to motor vehicles, 27-28; general provision as to, 41.
- Joint investigations, authorized, 44.
- Judicial powers, of the Commission, enumerated, 29-30.
- Jurisdiction of the Commission, 28-43.
- Lewin, John Henry, 109.
- Meters, jurisdiction of Commission regarding, 41.
- Monopoly repealer, 4.
- Mosher, William E., 64.
- Motor vehicles, jurisdiction of Commission regarding, 25-28; proposed amendments concerning, 52, 54; operators of, as parties in cases before Commission, 85-102; disposition of cases concerning, 105.
- Municipal corporations, as subjects of regulation, 21; operating electric plants 34; proposed amendments regarding, 52; as parties to cases before Commission, 89.
- National Conventions, 52.
- Oaths, authority to administer, 44.
- Office of Public Service Commission. See Public Service Commission.
- Omissions and contingencies, 145.
- Opinions, filed in cases before Commission, 102, 110.
- Orders, as method of disposing of cases, 45; rehearing upon, 45; procedure regarding, 45-46; penalties for violation of, 47; proposed amendments regarding, 56; time intervals elapsing before filing of, 93, 94, 97, 98, 105, 108. See Supplementary Orders.
- Organization. See Public Service Commission.
- Original Cost, 136, 139-140.
- Pairo Bill, 7, 9-10.
- Passage of the law, history of, 1-12.
- Penalties, for violation of motor vehicle law, 26; general provisions regarding, 47; proposed increase of, 53, 55.
- People's Counsel, statutory provisions, 17; legal changes in office of, 17, n.; bill to establish office of, 51; part of legal staff, 59; appearances by, in formal cases before Commission, 100, 109.
- Poles, cases regarding, on Formal Docket, 85-102.
- Price fluctuations, effect on reproduction value, 141, 142, 143.
- Procedure before Commission, statutory provisions regarding, 43-45; issuing subpoena in, 43; administering oaths in, 44; joint hearings in, 44.
- Procedure before the courts, 45-47; action by way of, to set aside order of the Commission, 45-46; witnesses in, 46.
- Protests, filed in formal cases, 102, 110.
- Public cemeteries, 52.
- Public Service Commission, statutory provisions regarding organization of, 14-19; members of, 14-15; removal of members of, 15; salaries of members of, 15; office of, 15; changes in salaries of members of, 16, n.; employees of, 17-18; prohibitions upon employees and members of, 18; miscellaneous provisions concerning, 19; present organization of, 59-61; participation of, in formal cases, 85-102. See also Accounting staff, Administrative powers, Cost of maintaining, General Counsel, Judicial powers, Jurisdiction of the Commission, People's Counsel, Procedure before Commission, Visitorial powers.
- Public Service corporations, enumerated by law, 19-20; duties imposed upon, 20-24; bill to tax for support of Commission, 51; proposed amendments concerning, 52-54; number of, 62-63; as parties to cases, 89-90, 104.
- Purcell, Steuart, 59.
- Railroads. See Steam Roads.
- Rate cases. See Valuation and rate cases.

- Rates, statutory provisions concerning maximum and minimum, 37; general provisions governing, 21; effect of law on prior statutes concerning, 22; emergency increase of, 37; suspension of, 36-37; proposed amendments dealing with, 55.
- Rate of return, legal theory of, 137-138; practice regarding, 156-157.
- Rate structure, legal theory of, 138; practice regarding, 155-156.
- Reform League Bills, 1-2, 8, 9, 10.
- Reparations cases, on S. N. & R. Docket, 79-82; on Formal Docket, 85-102.
- Reports. See, Annual reports.
- Reproduction cost, as factor of fair value, 136; in Maryland practice, 140-148; criticism of, 143, n. See also, Construction overheads, Easements, Going Value, Working Capital, Depreciation.
- Republican platform, 2, n.
- Sanitary Commissions, statutory provisions regarding, 25.
- Security issues, statutory provisions concerning, 30-32; cases concerning, 32-33; proposed amendments regarding, 57; in cases on Formal Docket, 85-102; analysis of cases involving, 110-114.
- Securities, value of, as factor of fair value, 136, 148, 149; return based upon, 161-163.
- Service, statutory provisions regarding, 22. See, Complaints.
- Service fee, 53.
- Short notice cases, on S. N. & R. Docket, 79-82; on Formal Docket, 85-102.
- Short notice and reparations docket, cases upon, 61; types of cases, 79-80; tables, 80-82; bases of petition in cases upon, 80-81; time intervals in, 82.
- Sidings, cases dealing with construction, and removal of, 85-102.
- Sleeping car companies, number of, 62; as parties to cases on Formal Docket of Commission, 89.
- Standards of quality and service, 41.
- State Senate, in passing regulatory legislation, 8-12.
- Steamboat Companies, statutory provisions concerning, 20, 24; number of, 62; as parties to cases on Formal Docket of Commission, 89.
- Steam Roads, statutory provisions concerning, 19; required to install side-track connections, 30; security issues of, 33, 112; as parties to cases on Formal Docket of Commission, 89; number of, 62.
- Stenographer's record, size of, in cases on Formal Docket of Commission, 101, 110.
- Straus Bill, 4-8, 10-13.
- Straus, Isaac Lobe, 2, 11.
- Street railways, statutory provisions concerning, 19; proposed amendments regarding, 57; number of, 62; as parties to cases on Formal Docket of Commission, 89.
- Supplementary orders, 98, 107-108.
- Suspension of rates. See Rates.
- Tables, See Correspondence Docket, Cost of Maintaining Commission, Courts, Formal Docket, Informal Docket, Security issues, Short Notice and Reparations Docket.
- Tariff schedule, provisions governing, 35-36.
- Taxicabs, subject to regulation, 20; change in law concerning, 20, 40; proposed amendments concerning, 57; operators of, as parties to cases on Formal Docket of Commission, 89; competitors of street railways, 160.
- Taxi stands, proposed amendment concerning, 52.
- Telegraph companies, statutory provisions concerning, 20; number of, 62; as parties to cases on Formal Docket of Commission, 89.
- Telephone companies, statutory provisions concerning, 20; proposed amendments regarding, 58; number of, 62; as parties to cases on Formal Docket of Commission, 89.
- Time intervals, in cases on Correspondence and Informal Dockets, 75, 77; in cases on Formal Docket, 93-98, 105-108; in cases on S. N. & R. Docket, 82; in court cases, 120-129.
- Transportation. See Motor Vehicles, Steam Roads, Steamboats, Street railways.
- United Railways and Electric Company, legislation concerning, 57; in cases on Correspondence and

- Informal Dockets, 74-78; in cases on Formal Docket, 90, 104; in valuation and rate cases, 117, 118, 134, 140, 142, 145-147, 152-153, 157; valuation of easements of, 145; special appendix on, 165-168.
- Valuation, section relating to, in original bill, 10; statutory provisions concerning, 42; of easements, 55. See also Valuation and rate cases.
- Valuation and rate cases, general comments on, 131-132; on Formal Docket, 87, 103; data on Maryland, 132-135; legal theories regarding, 135-138; Maryland practice in respect to, 138-159.
- Value. See, Fair Value, Going Value, Intangible Values.
- Visitorial Powers, of the Commission, enumerated, 35-42.
- Water Companies, statutory provisions concerning, 20; number of, 62; as parties to cases on Formal Docket, 89.
- West, Harold E., 59.
- Witnesses, in cases on Formal Docket, 99, 108.
- Working capital, as part of reproduction cost, 149; allowance for, in Maryland practice, 148.

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